In the United States District Court for the Territory of Hawaii.

Criminal No. 8518.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT K. MOOKINI, LEE SAU CHONG, WILLIAM E. MILES and JOHN E. CUNNINGHAM,

Defendants.

CLERK'S STATEMENT.

Time of Commencing Suit: March 19, 1935—Indictment filed.

Names of Original Parties: United States of America, Plaintiff; Robert K. Mookini, Lee Sau Chong, William E. Miles and John E. Cunningham, Defendants.

Dates of Filing Pleadings:

March 19, 1935—Indictment.

March 26, 1935—Demurrer of Robert K. Mookini.

March 26, 1935—Demurrer of Lee Sau Chong.

April 8, 1935—Motion for Bill of Particulars (Robert K. Mookini).

April 17, 1935—Motion for Bill of Particulars (Lee Sau Chong).

April 17, 1935—Motion for Severance.

June 7, 1935—Motion for New Trial (Lee Sau Chong).

June 7, 1935—Motion for New Trial (Robert K. Mookini). [3]

Times When Proceedings Were Had:

March 19, 1935—Indictment filed, bonds fixed.
March 21, 1935—Continuance.
March 22, 1935—Arraignment and plea of defendant Cunningham.
March 25, 1935—Continuance.
April 1, 1935—Demurrer filed, continuance for hearing.
April 3, 1935—Hearing on demurrers.
April 8, 1935—Hearing on motion for bill of particulars.
April 13, 1935—Continuance.
April 17, 1935—Hearing on motion for bill of particulars and motion for severance.
April 20, 1935—Hearing on motion for severance.
April 22, 1935—Decision on motion for severance.
April 26, 1935—Case set for trial.
May 13, 1935—Proceedings at trial, continuance for further trial.
May 14, 1935—Proceedings at further trial, continuance.
May 15, 1935—Proceedings at trial, continuance.
May 16, 1935—Proceedings at further trial, continuance.
May 17, 1935—Proceedings at trial, continuance.
May 20, 1935—Proceedings at further trial, continuance.
May 21, 1935—Proceedings at further trial, continuance.

May 22, 1935—Proceedings at trial, continuance for further trial.

May 23, 1935—Proceedings at further trial, continuance. [4]

May 24, 1935—Proceedings at further trial, continuance.

May 27, 1935—Proceedings at further trial, continuance.

May 28, 1935—Proceedings at further trial.

June 10, 1935—Continuance.

June 14, 1935—Proceedings at hearing on motion for new trial, continuance.

June 19, 1935—Proceedings at further hearing on motion for new trial.

June 29, 1935—Proceedings at sentence.

Proceedings in the above-entitled matter were had before the Honorable S. C. HUBER, District Judge.

Dates of Filing Appeal Documents:

September 27, 1935—Notice of Appeal, Petition for Appeal, Assignment of Errors, Citation issued.

July 5, 1935—Bond (R. K. Mookini).

July 5, 1935—Bond (Lee Sau Chong).

November 13, 1935—Cost Bond.

December 21, 1935—Bill of Exceptions.

September 27, 1935—Praecipe for Transcript of Record. [5]

CERTIFICATE OF CLERK AS TO THE ABOVE STATEMENT.

United States of America,
Territory of Hawaii—ss.

I, WM. F. THOMPSON, JR., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties, the several dates when the respective pleadings were filed; the times when proceedings were had and the names of the judge presiding; the date of the filing and entering of the verdict and the dates when appeal documents were filed and issued in the above-entitled cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of April A. D. 1936.

[Seal] WM. F. THOMPSON, JR.,
Clerk, U. S. District Court, Territory of Hawaii.

[6]

[Title of Court and Cause.]

INDICTMENT.

Counts I and II: Violation of Section 80, Title 18, United States Code (Section 35, C. C.)

A True Bill. Mar. 19, 1935

/s/ DAVID L. OLESON,
Foreman.

/s/ INGRAM M. STAINBACK,
United States Attorney, District of Hawaii.

Filed Mar. 19, 1935 at 12 o'clock and 20 minutes P. M.

WM. F. THOMPSON, JR.,
Clerk.
By /s/ THOS. P. CUMMINS,
Deputy Clerk.

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of the defendants named therein, bail hereby being fixed at $.....

Chong	$1,000
Mookini	$1,000
Miles	$ 500

/s/ EDWARD K. MASSEE,
Judge, United States District Court, Territory of Hawaii. [7]

The United States of America,
District of Hawaii—ss.

COUNT I.

The Grand Jurors of the United States, empaneled, sworn and charged at the term aforesaid, of the Court aforesaid on their oath, present that:

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

on or about the 7th day of June, 1934, at the City and County of Honolulu, Territory of Hawaii,

within said District and within the jurisdiction of this Court, did jointly, knowingly, wilfully, unlawfully and feloniously make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher, dated May 12, 1934, upon and against the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, in the sum of Two Hundred Thirty-one Dollars ($231.00); that is to say, a certain claim and voucher purporting that Lee Chong Company of Honolulu, City and County of Honolulu, Territory of Hawaii, was then, there and thereby entitled to the sum of Two Hundred Thirty-one Dollars ($231.00) for groceries, fruits and vegetables delivered to said Schofield Camp of the Civilian Conservation Corps during the month of May, 1934; that said claim and voucher was then and there, to-wit, at the time of making and presenting thereof as aforesaid, false, [8] fictitious and fraudulent in this: That the following items appearing on said claim and voucher, to-wit:

500 only fresh oysters @$3.50 per hundred	$17.50
4 cases table red apples @$2.55 per case (6 cases billed as delivered—2 only delivered)	10.20
400 lbs. pumpkin @$.04¼ per lb.	17.00
400 lbs. fresh spinach @$.04 per lb.	16.00
400 lbs. white squash @$.05 per lb.	20.00
40 lbs. fresh lima beans @$.08 per lb.	3.20
	$83.90

were not delivered to said Civilian Conservation Camp at all, and that said Lee Chong Company was not entitled to pay therefor, all of which the said

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew at the time of making, causing to be made, and presenting and causing to be presented, said claim and voucher, and that said claim and voucher was then and there false, fictitious and fraudulent, and so the Grand Jurors, on their oath, present that

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

at the City and County of Honolulu, Territory of Hawaii, within said District and within the jurisdiction of this Court, did, on or about the 7th day of June, 1934, make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher upon and against the Schofield Camp of the Civilian Conservation Corps aforesaid, which said claim and voucher they, the said [9]

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew to be false, fictitious and fraudulent; contrary to law and to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to-wit, on or about the 7th day of September, 1934, at the City and County of Honolulu, Territory of Hawaii, within said District and within the jurisdiction of this Court,

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

the identical persons named in the first Count of this indictment, did jointly, knowingly, wilfully, unlawfully and feloniously make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher, dated September 1, 1934, upon and against the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, in the sum of Five Hundred Twenty-six Dollars Sixty Cents ($526.60); that is to say, a certain claim and voucher purporting that Lee Chong Company of Honolulu, City and County of Honolulu, Ter-

ritory of Hawaii, was then, there and thereby entitled to the sum of Five Hundred Twenty-six Dollars Sixty Cents ($526.60) for groceries, fruits and vegetables delivered to said Schofield Camp of the Civilian Conservation Corps during the month of August, 1934; that said claim and voucher was then and there, to-wit, at the time of making and presenting thereof [10] as aforesaid, false, fictitious and fraudulent in this: That the following items appearing on said claim and voucher, to-wit:.

25	lbs. California yams @$.10 per lb. (50 lbs. billed—25 lbs. only delivered)	$ 2.50
6	cases honey dew melons @$2.50 per case	15.00
300	lbs. pumpkin @$.045 per lb.	13.50
15	gallons mayonnaise @$1.50 per gallon	22.50
10	lbs. dried mushrooms @$1.90 per lb.	19.00
		$72.50

were not delivered to said Civilian Conservation Camp at all, and that said Lee Chong Company was not entitled to pay therefor, all of which the said

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew at the time of making, causing to be made, and presenting and causing to be presented, said claim and voucher, and that said claim and voucher was then and there false, fictitious and frau-

dulent, and so the Grand Jurors, on their oath, present that

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

at the City and County of Honolulu, Territory of Hawaii, within said District and within the jurisdiction of this Court, did, on or about the 7th day of September, 1934, make and cause to be made, present and cause to be presented, for approval and payment to the Camp Director of the said Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, a fraudulent claim and voucher upon and against the Schofield [11] Camp of the Civilian Conservation Corps aforesaid, which said claim and voucher they, the said

ROBERT K. MOOKINI,
LEE SAU CHONG,
WILLIAM E. MILES, and
JOHN E. CUNNINGHAM,

well knew to be false, fictitious and fraudulent; contrary to law and to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

/s/ INGRAM M. STAINBACK,
United States Attorney, District of Hawaii. [12]

[Title of Court and Cause.]

DEMURRER.

Filed Mar. 26, 1935 at 1 o'clock and 50 minutes P. M.

/s/ WM. F. THOMPSON, JR.,
Clerk.

Receipt of a copy of the within demurrer is hereby acknowledged this 26th day of March, 1935.

/s/ WILLSON C. MOORE,
Ass't U. S. Attorney.

E. R. McGHEE, Esq.,
Arcade Building,
Honolulu, T. H.,
Attorney for Defendant Robert K. Mookini.

[13]

Comes now ROBERT K. MOOKINI, one of the defendants above named, by E. R. McGHEE, his attorney, and demurs to the indictment heretofore found and presented herein against him on the following grounds, to-wit:

I.

That it affirmatively appears from the allegations contained in count I of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as de-

fendants, did "make and cause to be made" and "present and cause to be presented" for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior.

II.

That it is impossible to ascertain from the first count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious and fraudulent claim and voucher, no facts [14] being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

III.

That it is impossible to ascertain from the allegations of said first count of said indictment how or in what manner this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

IV.

That it does not appear from the allegations of said first count of said indictment that the camp director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment,

was authorized by law to make payment or to approve the making of payment of said claim and voucher.

V.

That it affirmatively appears from the allegations of said first count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

VI.

That there is a misjoinder of defendants in the first count of said indictment.

VII.

That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice [15] without pleading or showing facts justifying such joint charge or trial.

VIII.

That said first count of said indictment is indefinite and uncertain and impossible for this defendant to plead to, in that it fails to give any statement or facts showing how or in what manner this defendant participated in making and presenting the alleged claim and voucher therein mentioned.

IX.

That said first count of said indictment is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher.

X.

That said first count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as charges which could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

XI.

That said first count of said indictment, while charging that said goods "were not delivered to said Civilian Conservation Camp at all," fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

[16]

XII.

That it does not appear from said first count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

XIII.

That said first count of said indictment fails completely and wholly to show facts upon which this defendant can possibly know the exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof.

XIV.

That it affirmatively appears from the allegations contained in count II of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as defendants, did "make and cause to be made" and "present and cause to be presented" for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior.

XV.

That it is impossible to ascertain from the second count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious

and fraudulent claim and voucher, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

XVI.

That it is impossible to ascertain from the allegations of said second count of said indictment how or in what manner [17] this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

XVII.

That it does not appear from the allegations of said second count of said indictment that the camp director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment, was authorized by law to make payment or to approve the making of payment of said claim and voucher.

XVIII.

That it affirmatively appears from the allegations of said second count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

XIX.

That there is a misjoinder of defendants in the second count of said indictment.

XX.

That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice without pleading or showing facts justifying such joint charge or trial.

XXI.

That said second count of the said indictment is indefinite and uncertain and impossible for this defendant to plead to, in [18] that it fails to give any statement or facts showing how or in what manner this defendant participated in making and presenting the alleged claim and voucher therein mentioned.

XXII.

That said second count of said indictment is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher.

XXIII.

That said second count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or

could properly be made, or as charges which could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

XXIV.

That said second count of said indictment, while charging that said goods "were not delivered to said Civilian Conservation Camp at all," fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

XXV.

That it does not appear from said second count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

XXVI.

That said second count of said indictment fails completely and wholly to show facts upon which this defendant can pos- [19] sibly know the exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof.

WHEREFORE, this defendant asks the judgment of this court whether he be required to answer unto said indictment; asks that said indict-

ment be quashed and that he may be dismissed and discharged from the premises specified in said indictment.

Dated at Honolulu, Territory of Hawaii, this 26th day of March, 1935.

ROBERT K. MOOKINI,
By /s/ E. R. McGHEE,
His Attorney. [20]

[Title of Court and Cause.]

DEMURRER OF DEFENDANT,
LEE SAU CHONG

Filed Mar. 26, 1935 at 2 o'clock and 20 minutes p. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, T. H.
Attorney for Defendant,
Lee Sau Chong.

Receipt is hereby acknowledged of copy of the within demurrer this March 26, 1935.

(s) WILLSON C. MOORE,
Assistant U. S. Attorney. [21]

Comes now the defendant LEE SAU CHONG, by his attorney Barry S. Ulrich and demurs to the Indictment heretofore found herein by the grand jury of the United States on, to-wit: The 19th day of March, 1935; and as grounds for demurrer alleges as follows:

Defendant demurs to COUNT ONE of said Indictment on the ground:

I.

That it affirmatively appears from the allegations thereof that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim.

II.

That it is impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason [22] of which it is charged that he acted in a manner contrary to law.

III.

That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

IV.

That facts are not stated in this Count of said Indictment showing the actual doing of acts or

happening of facts showing the commission of a crime by this defendant.

V.

That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

VI.

That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count.

VII.

That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

VIII.

That there is a misjoinder of defendants. [23]

IX.

That it affirmatively appears from said indictment that there is an attempt to force persons to

trial jointly to their prejudice without the pleading or showing of facts justifying any such joint charge or trial.

X.

That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

XI.

That the said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill.

XII.

That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

XIII.

That said Count of said Indictment while charging that said goods were not delivered to the

Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place [24] for delivery.

XIV.

That it does not appear from the allegations of said Count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it affirmatively appearing that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery said Count failing to indicate that such proper delivery was not made.

XV.

That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

XVI.

That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code (Section 35, C. C.).

XVII.

That said count of said Indictment fails completely to state facts from which this defendant can possible know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

DEFENDANT DEMURS TO COUNT TWO of said Indictment on the ground:

I.

That it affirmatively appears from the allegations thereof that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim. [25]

II.

That it is impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

III.

That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

IV.

The facts are not stated in this Count of said Indictment showing the actual doing of acts or hap-

pening of facts showing the commission of a crime by this defendant.

V.

That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

VI.

That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count. [26]

VII.

That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

VIII.

That there is a misjoinder of defendants.

IX.

That it affirmatively apears from said indictment that there is an attempt to force persons to trial jointly to their prejudice without the pleading or

showing of facts justifying any such joint charge or trial.

X.

That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

XI.

That said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill.

XII.

That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not [27] be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

XIII.

That said Count of said Indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and

completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place for delivery.

XIV.

That it does not appear from the allegations of said Count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it appearing affirmatively that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery, said Count failing to indicate that such proper delivery was not made.

XV.

That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

XVI.

That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code (Section 35, C. C.). [28]

XVII.

That said Count of said Indictment fails completely to state facts from which this defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

DEFENDANT DEMURS TO SAID INDICTMENT on the further ground that in the two Counts thereof there are charged two totally separate and distinct crimes in no wise connected the one with the other.

DEFENDANT DEMURS on the further ground that there is a misjoinder of causes of action.

Dated at Honolulu, T. H., March 26, 1935.

LEE SAU CHONG,
Defendant.

By (s) BARRY S. ULRICH
His Attorney

I hereby certify that this Demurrer is not intended for delay.

(s) BARRY S. ULRICH [29]

[Title of Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Filed Apr. 8, 1935 at 10 o'clock and 45 minutes a. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

E. R. McGHEE,
Arcade Building,
Honolulu, T. H.
Attorney for Robert K. Mookini,
Defendant.

Receipt of Copy of Within Motion acknowledged, this April 8, 1935, at.....A. M.

(s) WILLSON C. MOORE,
Asst. U. S. Attorney [30]

Comes now ROBERT K. MOOKINI, one of the defendants above named, by E. R. McGHEE, his attorney, and moves the Court for an order requiring the plaintiff to furnish this defendant with a Bill of Particulars in this action for the reasons following, to-wit:

I.

That this defendant is ignorant of the particular charges made against him in the indictment heretofore returned against him herein, and can not plead thereto until he shall have rendered to him a Bill of Particulars of the specific acts by reason of which it is alleged that he made and caused to be made, presented and caused to be presented, false, fictitious and fraudulent claims and vouchers as in said indictment set forth.

WHEREFORE this defendant moves the court for an order directing the plaintiff to deliver to him or file in this court a statement setting forth the particular actions by reason of which it is charged that this defendant has violated Section 80 Title 18 U. S. C. A. by making and causing to be made, presenting and causing to be presented the alleged fraudulent claims and vouchers referred to in said indictment, and in the meantime that all proceedings in this action be stayed. [31]

This motion is based upon the affidavit of Robert K. Mookini hereto attached and made a part hereof.

Dated at Honolulu, T. H., this the 8th day of April, 1935.

ROBERT K. MOOKINI,
By (s) E. R. McGHEE
His Attorney. [32]

[Title of Court and Cause.]

AFFIDAVIT

ROBERT K. MOOKINI, being duly sworn according to law, upon his oath says: That he is one of the defendants above named; that four offenses are alleged against him in the indictment heretofore found herein, without stating the particular facts constituting any one of said offenses; that this defendant is ignorant of the particulars of said offenses alleged in said indictment, and can not safely plead to or defend himself against the charges contained in said indictment until he shall have rendered to him a Bill of Particulars showing the particular acts by reason of which it is charged that he made and caused to be made, presented and caused to be presented the false, fictitious and fraudulent claims and vouchers as in said indictment set forth.

Dated at Honolulu, T. H., this the 8th day of April, 1935.

(s) ROBERT K. MOOKINI

Subscribed and sworn to before me this the 8th day of April, 1935.

(s) TATSUYO HIRASHIMA

Notary Public, 1st Judicial Circuit, Territory of Hawaii. [33]

[Title of Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Filed Apr. 17, 1935 at 10 o'clock and 30 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.
By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, T. H.
Attorney for Defendant,
Lee Sau Chong

Receipt of a copy is hereby acknowledged this 17th April, 1935

(s) WILLSON C. MOORE,
Ass't U. S. Atty. [34]

Comes now LEE SAU CHONG, one of the defendants above-named and moves this Honorable Court that it do make and issue an order requiring the plaintiff above-named to furnish to said defendant further particulars and information to apprise him of the nature of the charge being made against him so that it may be possible to prepare for trial herein, and in this connection your movant shows to this court as follows:

That he is wholly unconscious of and without knowledge of any facts showing or from which any jury could reasonably find the commission by him of either of the two crimes charged in the indictment;

that he is an employee of that certain business known as Lee Chong Company; that neither he, nor so far as he knows, said company, nor any other employee thereof, has perpetrated or attempted to perpetrate any fraud on the United States Government as charged in said indictment; that to the best of his knowledge said company has never done more han deliver merchandise to the United States Government exactly as ordered by the representatives of said Government, has never attempted to collect more than the true worth of said merchandise so ordered and delivered, nor to do anything in the matter of presenting bills for allowance than to present them in the manner directed and requested by the representatives of the Government; that said Lee Chong [35] Company has never attempted to secure and never has secured payment for merchandise ordered and delivered one cent in excess of its true value, and in fact, that there is now still owing to said Lee Chong Company by the United States Government a sum of something in excess of $100.00.

Therefore, your movant is totally at a loss as to upon what facts the prosecution can be now claiming the commission by this defendant of the crimes charged in the indictment and said defendant cannot possibly prepare for trial unless he be apprised of at least some facts which the prosecution herein claims show the commission of a crime or offense by this defendant.

WHEREFORE, defendant moves that plaintiff be required to furnish the following particulars:

(1) A statement showing how and in what manner it is claimed that this defendant, Lee Sau Chong, participated in the joint making of a fraudulent claim against the Government.

(2) What said claim or claims was or were and where it was fraudulent.

(3) When said claim or claims was or were presented.

(4) To whom said alleged fraudulent claim or claims was or were presented.

(5) What part was taken by defendant Lee Sau Chong in the presentment of said alleged fraudulent claim or claims.

(6) Whether it is claimed said defendant Lee Sau Chong presented said alleged fraudulent claim or claims on his own behalf or as agent or representative for said Lee Chong Company.

(7) Whether it is claimed that said defendant Lee Sau Chong presented a bill to the Government with intent to deceive or defraud the Government and officials thereof in the procuring of moneys in excess of the true worth of merchandise actually delivered to the Government on order of its duly authorized representative. [36]

(8) Whether it is claimed that the Government was actually defrauded by defendant of any sum of money and if so, how much.

(9) Whether it is claimed that any attempt was ever made to defraud the Government of any sum of money by this defendant and if so, how much.

(10) What part it is claimed that this defendant had in the commission of said Joint crimes charged

in said indictment and what part was had by the other three defendants named in said indictment.

(11) Whether by the language of the two counts of said indictment it is meant that goods and merchandise were charged to the Government in a certain amount without the delivery of merchandise in that amount, or that mistakes or errors were made in the description of the merchandise delivered.

This motion is based upon the allegations of fact herein contained, in the records and files herein and upon such further showing as may be made upon the hearing hereof.

Dated at Honolulu, T. H., April 17, 1935.

LEE SAU CHONG,
Defendant

By (s) BARRY S. ULRICH
His Attorney. [37]

[Title of Court and Cause.]

MOTION FOR SEVERANCE.

Filed Apr. 17, 1935 at 2 o'clock and 55 minutes P. M. Wm. F. Thompson, Jr., Clerk. By (s) Thos. P. Cummins, Deputy Clerk.

BARRY S. ULRICH,
317 Dillingham Building,
Honolulu, T. H.
Attorney for Defendant,
Lee Sau Chong. [38]

Comes now LEE SAU CHONG, defendant above-named, and moves that this Court do make and enter its order directing that his cause as defendant in the above-entitled matter be severed for the purposes of trial from the causes of the other defendants herein, and that said cause do be set for trial as to him alone on a day certain.

Dated at Honolulu, T. H., April 13, 1935.

LEE SAU CHONG,
Defendant.

By /s/ BARRY S. ULRICH,
His Attorney. [39]

AFFIDAVIT IN SUPPORT OF MOTION FOR SEVERANCE.

Territory of Hawaii,
City and County of Honolulu.—ss.

LEE SAU CHONG, being first duly sworn, on oath deposes and says: That he is one of the defendants in the above-entitled matter, and your affiant says that he is an employee of that certain company known as Lee Chong Company; that he is not and never has been in the employ of the Government of the United States; that he knows of no fact indicating or showing the commission by him of either of the crimes charged in the indictment herein; that he is completely innocent of having ever in any way defrauded or attempted to defraud the United States Government; that so far as he is concerned and so far as

the company known as Lee Chong Company is concerned, there has never at any time been any act or activity other than a perfectly proper delivery of merchandise as ordered by the officials of the Government in the manner directed and to the place indicated by those officials and a bona fide charging for such delivery to the extent only of the true worth and value of merchandise delivered as per order; that there has never been an attempt to procure payment of more than has been justly due; that there has never been received more than which was in fact justly due, and that there is still a balance owing from the United States Government to the said Lee Chong Company; affiant says that as to the other defendants jointly indicted with him in the above-entitled matter he is informed and believes and therefore alleges that they are or at the time of the happening of the events referred to in the indictment herein were all Government officials in the employ of the United States Government; that one of them was the officer to whom bills had to be presented; that they were authorized to act on behalf of the United States Government and as to the actions and activities of said Government officials after the delivery to them as per their order of the merchandise hereinabove referred to, your affiant [40] knows absolutely nothing, and affiant says that if any offense has been committed, it could only have been committed after all participation by him said Defendant and Lee Chong Com-

pany had ceased, and that it would be highly prejudicial to require him to go to trial jointly with said other defendants in view of the fact that evidence would necessarily have to be made available as to them which would not be admissible as to your affiant if tried alone and yet which must inevitably prejudice the rights and interests of affiant in any joint trial which might be held.

Affiant asks that this court do permit and require that he be brought to trial herein alone and in a trial in which evidence as to himself alone will be admissible, and shows to this court that serious prejudice would be suffered were he to be forced to trial jointly with persons bearing a totally different relation to the subject matter of the charges herein involved and against whom as Government officials entirely other and different evidence would be admissible than would be admissible against your affiant or received in the event that he be tried alone.

Further than this affiant sayeth not, excepting that this affiant is made in support of the motion for severance filed herewith.

/s/ LEE SAU CHONG.

Subscribed and sworn to before me this 17th day of April, 1935.

[Seal] /s/ MADELINE L. HAYDEN,
Notary Public, First Judicial Circuit, Territory of Hawaii. [41]

[Title of Court and Cause.]

INSTRUCTIONS GIVEN BY COURT.

5/28/1935 /s/ S. C. HUBER,
Judge.

INGRAM M. STAINBACK,
United States Attorney,
District of Hawaii,
WILLSON C. MOORE,
Assistant United States Attorney, District of Hawaii,
Attorneys for Plaintiff. [42]

PLAINTIFF'S INSTRUCTION No. 1.

You are instructed that the Grand Jury in this case returned an indictment against four defendants, namely, Robert K. Mookini, Lee Sau Chong, William E. Miles and John E. Cunningham. The defendant John E. Cunningham has entered a plea of guilty and, therefore, is not on trial at this time; that the defendant William E. Miles has obtained a severance in this case which entitles him to a separate trial and, therefore, is not on trial at this time, and that the only two defendants now upon trial are the defendants Robert K. Mookini and Lee Sau Chong.

Given

/s/ S. C. HUBER,
Judge [43]

PLAINTIFF'S INSTRUCTION No. 2.

You are instructed that the indictment in this case is in two counts and charges a violation of Section 80 of Title 18 of the United States Code, the material parts of which are as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States . . . any claim upon or against the Government of the United States, or any department or officer thereof . . . knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof . . . shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, shall be . . ."

Then follows the punishment.

Given

(s) S. C. HUBER,
Judge. [44]

PLAINTIFF'S INSTRUCTION NO. 3.

The indictment in this case is in no sense evidence or proof that the defendants have committed the alleged crime, but is merely a formal allegation, required by law, alleging that the crime was committed in the form and manner therein set forth, and no juror should suffer himself to be influenced in any degree by the fact that this indictment has been returned against the defendants.

Given

(s) S. C. HUBER, [45]

PLAINTIFF'S INSTRUCTION NO. 4.

You are instructed that the Camp Director of the Civilian Conservation Corps is an officer in the civil service of the United States. You are further instructed that it appears from the evidence in this case that said Camp Director was charged with the duty of disbursing what is known as the mess fund, and there is further evidence that he also handled a canteen fund, the mess fund being a Government realization while the canteen fund belonged wholly to the members of the Civilian Conservation Corps, and said Canteen fund was not a fund belonging to the Government of the United States.

Given

(s) S. C. HUBER,
Judge. [46]

PLAINTIFF'S INSTRUCTION NO. 5.

You are instructed that the words "false, fictitious, fraudulent and knowing" have been defined by the Federal Courts as follows:

> The term "false" used, means "unfounded" or "unjust"; by "fictitious' is meant "not real"; by "fraudulent", "wrong" or "deceitful". These terms have no special legal signification in their use in this statute, but are to be taken by you in their ordinary and well-understood sense. The language of the statute and indictment is, "knowing such claim to be false, fictitious and fraudulent". By the word "knowing", as here used is meant the having a certain and clear perception of the falsity of the claim made."
>
> United States v. Bettiger, Federal Case No. 14599. [47]

PLAINTIFF'S INSTRUCTION NO. 6.

A criminal prosecution begins with the presumption that the defendants, although accused, are innocent, and to overcome this legal presumption the evidence must be clear and convincing, and sufficiently strong to convince the jury beyond a reasonable doubt that the defendants are guilty. The presumption of innocence is evidence created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced

to overcome the proof which the law has created. The benefit of this presumption attends the accused at every stage of the proceedings and stands as his sufficient protection unless and until it has been removed by evidence proving his guilt beyond a reasonable doubt.

Given

(s) S. C. HUBER,
Judge. [48]

PLAINTIFF'S INSTRUCTION NO. 7.

In this case the burden of proof is upon the United States and, to entitle it to a conviction of the defendants, or either of them, the United States must prove every material element of the offense, to the satisfaction of each member of the jury, and beyond a reasonable doubt. If any one of you entertain a reasonable doubt of the defendants' guilt as to any material element of the offense, it is your sworn duty to vote for an acquittal as to such offense, otherwise to vote for conviction.

Given

(s) S. C. HUBER,
Judge. [49]

PLAINTIFF'S INSTRUCTION NO. 8.

If you can reconcile the evidence with any reasonable hypotheses consistent with the defendants' innocence, or either of them, it is your duty to do so and in that case to find them not guilty, for every

reasonable doubt is to be resolved in favor of each defendant, and it is not sufficient that the circumstances coincide with, account for, and therefore render probable the guilt of the defendants, or either of them. They must exclude to a moral certainty every other reasonable hypothesis.

Given

(s) S. C. HUBER,
Judge. [50]

PLAINTIFF'S INSTRUCTION NO. 9.

You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime, and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts.

Given

(s) S. C. HUBER,
Judge. [51]

PLAINTIFF'S INSTRUCTION NO. 10.

A reasonable doubt is not a fanciful doubt, but such a doubt raised by the evidence as a reasonable man can give a reason for. The law does not require that the government shall prove an accused

guilty beyond all possible doubt, but the law does require the government shall prove each and every one of the material allegations of the indictment to your satisfaction and beyond all doubt that is reasonable, in other words, it must satisfy you as reasonable men of the guilt of the accused and satisfy you beyond a reasonable doubt.

You are the exclusive judges of the credibility of the witnesses and of the weight to be attached to their testimony, but the law you must take from the Court whether or not you, in your own minds, believe the Court to be correct. To pass upon the law is the exclusive province of the Court, but to pass upon the facts and apply to such facts the law as given by the Court is the exclusive province of the jury, and in this connection I instruct you that, although the Judge legally may comment upon the facts and give his opinion, nevertheless that is the opinion of the Judge only and the final responsibility of deciding the facts rests with you.

In determining the credibility of a witness you may take into consideration his interest, bias, prejudice, motives or feelings of revenge, if any, his manner of testifying, his demeanor on the witness stand and the probability or improbability of the story told by him, or any other thing which a reasonable man would consider in determining whether or not he believed a witness. If you believe that any witness has wilfully testified falsely or wilfully misled you as to any material fact in the case, you may

disregard his entire testimony except such part as may be corroborated by other credible evidence, or believed by you to be true.

Given

(s) S. C. HUBER,
Judge. [52]

INSTRUCTION NO. 11.

You are instructed that in this case two of the defendants now on trial have testified in their own behalf. This is a right conferred upon them by law. The fact that they are defendants may be considered by you as bearing upon their interest in the result of the case. In connection with determining the weight and credibility to be given to their testimony but apart from such consideration, the testimony of such defendants is to be treated the same as testimony of other witnesses.

Given

(s) S. C. HUBER,
Judge. [53]

PLAINTIFF'S INSTRUCTION NO. 12.

Finally, Gentlemen of the Jury, if after deliberately considering all the facts and circumstances in this case and carefully weighing the evidence and considering in connection therewith the various presumptions and rules of evidence as outlined in these instructions, you find from the evidence and to your satisfaction beyond all reasonable doubt

the allegations in the indictment have been established, it is your duty to return a verdict of guilty, otherwise it is equally your duty to return a verdict of not guilty.

(s) S. C. HUBER,
Judge. [54]

PLAINTIFF'S INSTRUCTION NO. 13.

You are instructed that with the question of punishment you have nothing to do, as the law has left that to be determined by the court, in case of a conviction.

Given

(s) S. C. HUBER,
Judge. [55]

PLAINTIFF'S INSTRUCTION NO. 14.

Gentlemen of the Jury, you are instructed that if you find and believe from the evidence beyond a reasonable doubt that the defendants named in this indictment, or any of them, agreed between themselves or conspired together to make, cause to be made, present or cause to be presented for approval or payment the vouchers covered by Counts I or II of the indictment, and that in pursuance thereof said vouchers, or either of them, were so made, presented or caused to be presented with intent to defraud the United States Government or any department thereof, then I charge you that any act or declaration of such agreeing defendant or defendants in furtherance of said common purpose

done or said by him or them in the absence of any other defendant is legal evidence in this case against each of the said agreeing defendants and may be considered by you in finding your verdict.

Given

(s) S. C. HUBER,
Judge.

Dixon v. State, 42 S. E. 356;
Bradley v. State, 57 S. E. 237;
Randall's Instructions to Juries, Vol. 1, Page 257, Sec. 135. [56]

DEFENDANTS' INSTRUCTION NO. 1.

I instruct you that the issue that you are to try in this case is that presented by the indictment and the defendants' plea of "Not Guilty." For be it remembered, that the plea of "Not Guilty" puts in issue and requires the prosecution to prove each and every material allegation in the charge beyond all reasonable doubt. The indictment in this case is a mere accusation and is not of itself any evidence, not the slightest, of the defendants' guilt, and no juror should permit himself to be to any extent influenced because or on account of the indictment against the defendants. You are further instructed that the defendants are presumed by the law to be innocent of the crime charged against them, in each and all its parts, and this presumption surrounds, shields and protects them throughout each and every *state* of this trial until overcome by satisfactory evidence, which convinces you of their guilt

as charged beyond every reasonable doubt. Moreover, this presumption of innocence is not a mere form to be disregarded by you at pleasure, but it is an essential, substantial part of the law of the land, and is binding upon you in this case, and it is your duty to give the defendants the full benefit of this presumption and to acquit them, unless, as I have already stated, the evidence satisfies you of their guilt beyond every reasonable doubt.

Given

(s) S. C. HUBER,
Judge. [57]

DEFENDANTS' INSTRUCTION NO. 3.

Under the law no jury should convict a person charged with crime upon mere suspicion, however strong, or simply because there is a preponderance of all of the evidence in the case against him, or simply because there are strong reasons to suspect him guilty. What the law requires, before a person can be convicted of crime, is not suspicion, not mere probabilities, but proof which excludes every reasonable doubt of his innocence.

Given

(s) S. C. HUBER,
Judge. [58]

DEFENDANTS' INSTRUCTION NO. 5.

In order to secure a conviction in this case, the Government may rely upon circumstantial evidence. The theory of the prosecution is that from the

circumstances which it contends have been proven in this case, you are warranted in finding the defendants or either of them guilty as charged, beyond a reasonable doubt. But I instruct you, as a matter of law, that where a conviction is sought upon circumstantial evidence, the prosecution must not only show the alleged circumstances to be true, but further, that such circumstances are incompatible upon any reasonable hypothesis, with the innocence of the defendants, and incapable of explanation upon any other reasonable theory than that of their guilt. In all criminal cases where it is sought to convict a person upon circumstantial evidence, it is not enough that all the circumstances proven are consistent with and point to the defendants' guilt, but to authorize a conviction upon this species of evidence, the circumstances proven must not only be in harmony with the guilt of the accused, but they must be of such a character that they cannot reasonably be true, and the defendants be innocent. Thus you cannot convict these defendants upon evidence merely showing a possible opportunity for the commission of the alleged crime, if there be any such evidence before you, nor can you convict these defendants nor either of them upon surmises, speculations and conjectures, nor can you convict these defendants upon suspicion, no matter how strong.

Given

(s) S. C. HUBER,
Judge. [59]

DEFENDANTS' INSTRUCTION NO. 6.

The defendants in this case cannot be guilty of the crime charged against them in the indictment herein and cannot be convicted thereof by you unless the prosecution has established to your satisfaction from the evidence beyond every reasonable doubt, that the defendants not only did the acts charged to have been done by them in the indictment herein, but also that the defendants had formed a criminal intent when they so acted to defraud or cheat the Government of the United States or a department thereof. And if you have any reasonable doubt arising from the evidence as to whether or not defendants or either of them had formed such criminal intent, you must give each defendant the benefit of such doubt and find them not guilty.

Given

(s) S. C. HUBER,
Judge. [60]

DEFENDANTS' INSTRUCTION NO. 7.

A reasonable doubt is that state of the mind which, after a full comparison and consideration of all the evidence, both for the Government and the defense, leaves the minds of the Jury in that condition that they cannot say that they feel an abiding faith amounting to a moral certainty from the evidence in this case, that the defendants are guilty of the crime as alleged in the indictment. If you have such a doubt, if your conviction of the

defendants' guilt, as alleged in the indictment, does not amount to a moral certainty from the evidence in this case, then you must give the defendants the benefit of that doubt and find them not guilty.

Given

(s) S. C. HUBER,
Judge. [61]

DEFENDANTS' INSTRUCTION NO. 8.

You have no right to disregard the testimony of the defendants on the ground alone that they are the defendants and stand charged with the commission of a crime. The law presumes the defendants to be innocent until they are proved guilty beyond all reasonable doubt, and the law allows them to testify on their own behalf, and you should fairly and impartially consider and weight their testimony, together with all of the other evidence in this case.

Given

(s) S. C. HUBER,
Judge. [62]

DEFENDANTS' INSTRUCTION NO. 10.

I further instruct you that the term "false" as used in the statute under which these defendants are being prosecuted means unfounded or unjust; that by "fictitious" is meant not real; by "fraudulent" is meant wrong or deceitful, and that the word "knowingly" as used in the phrase "knowing

such claim to be false, fictitious and fraudulent", is meant the having of a certain and clear perception of the falsity of the claim made.

U. S. vs. Bittinger, 24 Federal Cases No. 14,599.

Given

(s) S. C. HUBER,
Judge. [63]

DEFENDANTS' INSTRUCTION NO. 12.

I further instruct you that before you can find the defendants or either of them guilty as charged in the indictment herein, you must find from the evidence, and believe beyond any reasonable doubt that United States Government Exhibits Nos. D and G were made, caused to be made, presented or caused to be presented by the defendants or either of them, to an officer in the service of the United States or a department thereof for approval or payment out of United States Government Mess Funds.

Given

(s) S. C. HUBER,
Judge. [64]

DEFENDANTS' INSTRUCTION NO. 15.

I instruct you, Gentlemen of the Jury, that the crime charged in this case is that of knowingly making, causing to be made, presenting, or causing to be presented for payment or approval a false claim against the Government of the United States,

or a department or officer thereof, and that you cannot convict either of the defendants in this case unless you find from the evidence and beyond all reasonable doubt that such defendant did knowingly and intentionally have a part in making or presenting such false claim with the intent and design that it be paid by the United States Government and out of Government money, for it is of the essence of the crime that there must be an intent to defraud the United States Government.

Given

(s) S. C. HUBER,
Judge. [65]

DEFENDANTS' INSTRUCTION NO. 16.

I instruct you, Gentlemen of the Jury, that if you believe from the evidence that the defendant Lee Chong as manager of Lee Chong Company permitted or directed that certain items on the bills of May 12th and September 1st, which were not edibles, be listed as vegetables, without any knowledge as to whether it was intended by said Camp Director to pay such bill or bills out of one fund or another or out of Government funds or non-Government funds, and that he did not intend to defraud the United States Government, then you will find the defendant Lee Chong not guilty.

Given

(s) S. C. HUBER,
Judge. [66]

DEFENDANTS' INSTRUCTION NO. 17.

I instruct you, Gentlemen of the Jury, that before you can find the defendants or either of them guilty as charged in the indictment you must believe from the evidence and beyond all reasonable doubt that the defendants did knowingly participate in the making, causing to be made, presenting or causing to be presented for approval or payment to the Camp Director of the Civilian Conservation Corps either of the vouchers of May 12th or September 1st, 1934, for the purpose of defrauding the United States Government.

Given

(s) S. C. HUBER,
Judge. [67]

DEFENDANTS' INSTRUCTION NO. 18.

I instruct you, Gentlemen of the Jury, that a claim presented to an officer for payment could not be considered by you to be a false or fictitious claim within the meaning of the statute under which these defendants are being tried unless it was presented by the defendant with the intention of defrauding the United States Government.

Given

(s) S. C. HUBER [68]

DEFENDANTS' INSTRUCTION NO. 19.

I instruct you, Gentlemen of the Jury, that the only offenses charged in the indictment in this case

or which you may consider in determining the guilt or innocence of the defendants, or either of them, have to do with the so-called Mother's Day order billed as of May 12th, and the so-called Labor Day order billed as of September 1st.

Given

(s) S. C. HUBER [69]

PROCEEDINGS, INDICTMENT FILED, BONDS FIXED.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, March 19, 1935.

[Title of Court and Cause.]

The grand jurors aforesaid appeared in a body and, through their foreman, presented an indictment charging the defendants above named with the violation of section 80, Title 18, United States Code (Section 35, C.C.). The Court ordered that said indictment be filed. Upon motion of Mr. Willson C. Moore, Assistant United States Attorney, the Court ordered that a bench warrant issue for the defendants herein, bond of the defendants Lee Sau Chong and Robert K. Mookini being fixed at $1,000.00 and bond of the defendant William E. Miles being fixed at $500.00. [70]

CONTINUANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, March 21, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant William E. Miles with Mr. Fred Patterson, his counsel, the defendants Robert K. Mookini and Lee Sau Chong with Mr. Earl R. McGhee, their counsel. This case was called for arraignment. The Court ordered that this case be continued to Monday, March 25, 1935 at 2 p.m. for arraignment. [71]

PROCEEDINGS AT ARRAIGNMENT AND PLEA OF DEFENDANT CUNNINGHAM.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, March 22, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Miss Jean Vaughan, and also came the defendant John E. Cunningham, without counsel. This case was called for arraignment. The defendant waived the reading of the indictment, consenting that the charge be entered in the words thereof, and entered a plea of guilty as

charged. The Court ordered that sentence of said defendant be deferred. [72]

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, March 25, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Lee Sau Chong with Mr. Earl R. McGhee, their counsel, and the defendant Miles with Mr. Fred Patterson, his counsel. Mr. McGhee, gave notice of his intention to file demurrers on behalf of the defendants Mookini and Lee Sau Chong. The Court ordered that said demurrers be filed by March 26, 1935 at 2 p.m. The defendant Miles waived the reading of the indictment, consenting that the charge be entered in the words thereof. The Court ordered that plea of the defendant Miles be continued to April 1, 1935. [73]

DEMURRER FILED, CONTINUANCE FOR HEARING.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, April 1, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came the defendant William E. Miles with Mr. Fred Patterson, his counsel. The demurrer of the defendant William E. Miles was filed in open court. The Court ordered that argument on said demurrer be deferred to Wednesday, April 3, 1935 at 9:30 a.m. [74]

HEARING ON DEMURRERS.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, April 3, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Chong with Mr. E. R. McGhee, their counsel, and Mr. Fred Patterson with the defendant Miles. This case was called for argument on demurrers filed herein. Argument was had by Mr. McGhee on behalf of the defendants Mookini and Chong. Argument was had by Mr. Moore. Argument was had by Mr. Patterson. The case was submitted to the Court. The demurrers were overruled. Counsel for the defendants noted exceptions. The Court ordered that this case be continued to Monday, April 8, 1935 at 2 p.m. for plea. [75]

HEARING ON MOTION FOR BILL OF PARTICULARS.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, April 8, 1935.

[Title of Court and Cause.]

On this day came the defendant Robert K. Mookini with Mr. E. R. McGhee, his counsel, the defendant Lee Sau Chong without counsel and the defendant William E. Miles with Mr. Fred Patterson, his counsel. This case was called for hearing on a motion for a bill of particulars as to the the defendant Mookini. Argument was had by Mr. McGhee and Mr. Moore. The motion was submitted to the Court. The Court denied the motion for a bill of particulars. The defendant Mookini entered a plea of not guilty as charged. The defendant Lee Sau Chong entered a plea of not guilty as charged. The defendant Miles entered a plea of not guilty as charged. The Court ordered that this case be continued to Saturday, April 13, 1935 for setting.

[76]

CONTINUANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, April 13, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came Mr. Earl R. McGhee, counsel for the defendant Mookini, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for setting. Mr. Ulrich asked leave to be allowed to file a motion for a bill of particulars and a motion for severance and a motion for return of evidence on behalf of the defendant Lee Sau Chong. The Court allowed Mr. Ulrich to Monday, April 15, 1935 at 2 p.m. to file said motions. The Court ordered that the case be continued as to the other defendants. [77]

HEARING ON MOTION FOR BILL OF PARTICULARS AND MOTION FOR SEVERANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, April 17, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini by Mr. Earl R. McGhee, his counsel and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for hearing on a motion for bill of particulars as to the defendant Lee Sau Chong. Mr. Moore stated that he was willing to submit the motion without argument. Mr. Ulrich argued on

said motion. Mr. Moore argued. The motion for bill of particulars was denied, an exception noted and allowed. A motion for severance as to the defendant Lee Sau Chong was read into the record. Argument was had by respective counsel. The Court ordered that this case be continued to Saturday, April 19, 1935 for further hearing and for hearing on a motion for severance as to the defendant William E. Miles. [78]

HEARING ON MOTION FOR SEVERANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, April 20, 1936.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini by Mr. Earl R. McGhee, his counsel, the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel, and the defendant Miles by Mr. Fred Patterson, his counsel. This case was called for hearing on motions for severance as to the defendants Lee Sau Chong and William E. Miles. Mr. Ulrich made a statement. Mr. Moore stated his objection as to severance of the defendant Lee Sau Chong. Mr. Patterson made a statement as to his motion for severance as to Wm. E. Miles. The Court took this matter under advisement. [79]

DECISION ON MOTIONS FOR SEVERANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, April 22, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini by Mr. Earl R. McGhee, his counsel, the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel and the defendant William E. Miles by Mr. Fred Patterson, his counsel. This case was called for decision on motions for severance. The motion for severance as to the defendant Miles was granted. The Court ordered that the defendant Miles be tried separate and apart from the other defendants in this case. The motion for severance as to the defendant Lee Sau Chong was denied. The Court ordered that this case be continued to April 26, 1935 for setting. [80]

PROCEEDINGS, CASE SET FOR TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, April 26, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came the defendant Lee Sau Chong by Mr. Barry S. Ulrich, his counsel, and the defendant Robert K. Mookini by Mr. Earl R. McGhee, his counsel. This case was called for hearing on a motion to set for trial. The Court set this case for trial on Monday, May 13, 1935 at 9 a.m. [81]

PROCEEDINGS AT TRIAL,

Continuance for Further Trial.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, May 13, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. Earl R. McGhee, his counsel and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. Mr. Ulrich also appeared as associate counsel for the defendant Mookini. This case was called for trial as to the defendants Mookini and Lee Sau Chong. The following jurors were duly empaneled and sworn to try the issues herein: Gordon S. May; Wm. W. Jefferson; Kenneth C. Morley; Robert J. Moore; Hubert P. Alderman; Walter H. Neff; Samuel K. Toomey, Jr.; James A. Malloy; Charles B. Lemon, Jr.; Louis A. Soares; Alfred T. Burlem; Robert M. Berthe. Mr. Moore read the indictment

and made the opening statement to the jury. James W. Lloyd was called and sworn and testified on behalf of the United States. The jurors were admonished about discussing the facts in this case and were excused to Tuesday, May 14, 1935 at 9 a.m. [82]

PROCEEDINGS AT FURTHER TRIAL,

Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, May 14, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Lee Sau Chong, with Mr. Earl R. McGhee and Mr. Barry S. Ulrich, their counsel. This case was called for further trial. The jury heretofore empaneled and sworn to try the issues herein was present. Wm. E. Miles was called and sworn and testified on behalf of the United States. U. S. Exhibit #1, original copy of itemized statement of Lee Chong Co., to C.C.C. Camp, Schofield, dated May 12, 1934 for $231.00, covering vegetables, etc., furnished, was marked for identification. U. S. Exhibit #2, carbon copy of the foregoing statement was marked for identification. U. S. Exhibit #3, copy, itemized statement dated May 12, 1934, Lee Chong Co. to

C.C.C. Camp, Schofield, for provisions supplied, total $231, was marked for identification. U. S. Exhibit #4, copy, itemized statements dated May 12, 1934, Lee Chong Co. to C.C.C. Camp, Schofield, for provisions supplied, total $231.00 was marked for identification. U. S. Exhibit #5, copy of May, 1934, statement of Lee Chong Co. to C.C.C. Camp, totaling $901.65, for provisions furnished, was marked for identification. U. S. Exhibit "A", check book containing cancelled checks of C.C.C. Camp Director, from Apr. 9, 1934 to October 10, 1934, was admitted in evidence, marked and ordered filed. U. S. Exhibit "B", heretofore marked for identification as U. S. Exhibit #1; U. S. Exhibit [83] "C", heretofore marked for identification as U. S. Exhibit #2; U. S. Exhibit "D", heretofore marked for identification as U. S. Exhibit #3, U. S. Exhibit "E", heretofore marked for identification as U. S. Exhibit #4, U. S. Exhibit "F", heretofore marked for identification as U. S. Exhibit #5, were admitted in evidence, marked and ordered filed. U. S. Exhibit "G", copy of itemized statement, dated Sept. 1, 1935, Lee Chong Co. to C.C.C. Camp, total sum of $526.00 for provisions furnished, was admitted in evidence, marked and ordered filed. U. S. Exhibit "H", copy of itemized statement dated Sept. 1, 1934, total $454.10, Lee Chong Co. to C.C.C. Camp, Schofield, of provisions supplied, was admitted in evidence, marked and ordered filed. U. S. Exhibit "I", copy of

monthly statement for month of September, total $857.78, Lee Chong Co. to C. C. C. Camp, Schofield, was admitted in evidence, marked and ordered filed. U. S. Exhibit "J", copy of itemized statement, dated Sept. 1, 1934, total $72.50, Lee Chong Co. to C.C.C. Camp, Schofield, for various supplies, was admitted in evidence, marked and ordered filed. U. S. Exhibit "K", copy of receipt of Lee Chong Co. from C.C.C. Camp Director, Schofield, dated Oct. 12, 1934 for sum of $820.13, was admitted in evidence, marked and ordered filed. The jury was excused and the government made an offier of proof. The offer of proof was denied. The Court ordered that this case be continued to Wednesday, May 15, 1935 at 9 a.m. [84]

PROCEEDINGS AT TRIAL,
Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, May 15, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, his counsel and Mr. Barry S. Ulrich, associate counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. The jury heretofore

empaneled and sworn to try the issues herein was present, said fact being stipulated by counsel. Wm. E. Miles resumed the witness stand on cross-examination. John E. Cuuningham was called and sworn and testified on behalf of the United States. The time for adjournment having arrived the Court ordered that this case be continued to Thursday, May 16, 1935 at 9 a.m. [85]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, May 16, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Robert K. Mookini, with Mr. Earl R. McGhee, his counsel and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury, heretofore empaneled and sworn to try the issues herein was present. John E. Cunningham resumed the witness stand on cross-examination. Herbert Lloyd was called and sworn and testified on behalf of the United States. James R. Mahaffy was called and sworn and testified on behalf of the United States. U. S. Exhibit

#6, council book, was marked for identification. Exhibit "L", heretofore marked for identification as U. S. Exhibit #6, was admitted in evidence, marked and ordered filed. Frank D. Gibson was called and sworn and testified on behalf of the United States. Harry M. Coleman was called and sworn and testified on behalf of the United States. Herbert Baldwin, Finance Officer, U. S. Army, was called and sworn and testified on behalf of the United States. The time for adjournment having arrived the Court ordered that this case be continued to Friday, May 17, 1935 at 9 a.m. [86]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, May 17, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Joseph I. De Ville, agent, secret service,

Treasury Department, was called and sworn and testified on behalf of the United States. The United States rested. A motion by Mr. Ulrich for a directed verdict of not guilty as to both defendants was made. The Court excused the jury to Monday, May 20, 1935 at 9 a.m. Argument was had by Mr. McGhee on the motion for directed verdict. Argument was had by Mr. Ulrich. Argument was had by Mr. Moore. The motion for directed verdict was denied. An exception was noted and allowed. [87]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, May 20, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Lee Sau Chong, a defendant herein, was called and sworn and testified on behalf of the defense. Defendants' Exhibit #1, copy of state-

ment, Lee Chong Co. to C.C.C. Camp, in the sum of $72.50, for provisions supplied, was admitted in evidence, marked and ordered filed. Defendants' Exhibit #2, copy of receipt dated Oct. 12, 1934 for $820.13, Lee Chong Co. from C.C.C. Camp Director, was admitted in evidence, marked and ordered filed. Defendants' Exhibit "A", account sheet showing Mr. Mookini's account with Lee Chong Company, for the months of September and October, 1934, was marked for identification. Defendants' Exhibit #3, cash book of Chun Yau Chee in Chinese characters, was admitted in evidence, marked and ordered filed. The Court ordered that this case be continued to Tuesday, May 21, 1935 at 9 a.m. [88]

PROCEEDINGS AT FURTHER TRIAL, Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, May 21, 1935.

[Title of Court and Cause.]

On this day came the United States by Mr. Willson C. Moore, Assistant United States Attorney, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel, and this case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the

issues herein was present. Lee Sau Chong resumed the witness stand on cross examination. Monty Rogue, clerk, Lee Chong Co., was called and sworn and testified on behalf of the defense. Defendants' Exhibit "A", heretofore marked for identification was admitted in evidence, marked Defendants' Exhibit #4 and ordered filed. The time for adjournment having arrived the Court ordered that this case be continued to May 22, 1935 at 9 a.m. for further trial. [89]

PROCEEDINGS AT TRIAL,
Continuance for Further Trial.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, May 22, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. Earl R. McGhee and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Daniel P. MacGregor, Sr., clerk, Disbursing Office, U. S. Navy Yard, was called and sworn and testified on behalf of the defense. Robert K.

okini was called and sworn and testified on behalf the defense. At 11:45 a.m. the Court ordered t this case be continued to Thursday, May 23, 5 at 9 a.m. [90]

PROCEEDINGS AT FURTHER TRIAL,
Continuance.

om the Minutes of the United States District Court for the Territory of Hawaii.

Thursday, May 23, 1935.

itle of Court and Cause.]

On this day came the United States by its Assist- t District Attorney, Mr. Willson C. Moore, and so came the defendant Mookini with Mr. Earl R. cGhee, and Mr. Barry S. Ulrich, his counsel, and e defendant Lee Sau Chong with Mr. Barry S. lrich, his counsel, and this case was called for rther trial. It was stipulated that the jury here- fore empaneled and sworn to try the issues herein as present. Robert K. Mookini resumed the wit- ss stand on cross examination. U. S. Exhibit M", copy of bill, Pacific Brewing Co., to Yamani, ted 9/1/34, for $16.15, was admitted in evidence, arked and ordered filed. Defendants' Exhibit #5, py of letter dated January 17, 1935, administra- ve assistant Department of Interior, to Earl R. cGhee, was admitted in evidence, marked and dered filed. Joseph P. Glowenle, salesman, Hurd ohlmann & Co., was called and sworn and testified

on behalf of the defense. Louis Hutchinson, former truck driver, Lee Chong Company, was called and sworn and testified on behalf of the defense. The Court ordered that this case be continued to May 24, 1935 at 9 a.m. [91]

PROCEEDINGS AT FURTHER TRIAL,
Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, May 24, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel, and this case was called for further trial. It was stiplated that the jury heretofore empaneled and sworn to try the issues herein was present. Marie Mookini was called and sworn and testified on behalf of the defense. Robert K. Mookini was recalled by Mr. Ulrich. U. S. Exhibit "N", copy of letter dated Jan. 9, 1935, office of Secretary of Interior to Robert K. Mookini, terminating Mr. Mookini's appointment as recreation officer, C.C.C. Camp, was admitted in evidence, marked and ordered filed. The defense rested.

Nellie Shelton, stenographer, was called and sworn and testified on behalf of the United States. U. S. Exhibit #7, copy of testimony of Robert K. Mookini, taken before Federal Grand Jury, on March 19, 1935, was marked for identification. U. S. Exhibit "O", heretofore marked for identification as U. S. Exhibit #7, was admitted in evidence, marked and ordered filed. Captain Baldwin was recalled by the prosecution. Harry M. Coleman was recalled by the prosecution. Harry F. Kim was called and sworn and testified on behalf of the United States. Frank D. Gibson was recalled by the government. Joseph I. De Ville was recalled by the government. The Court ordered that this case be continued to Monday, May 27, 1935 at 8:30 a.m. for further trial. [92]

PROCEEDINGS AT FURTHER TRIAL.
Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, May 27, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee, and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further

trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Wm. E. Miles was recalled by the government. John E. Cunningham was recalled by the government. James R. Mahaffey was recalled by the government. James Enright, M. D., was called and sworn and testified on behalf of the United States. The United States then rested. Monty Roque was recalled by the defense. Defendants' Exhibit #6, book, was admitted in evidence, marked and ordered filed. Lee Sau Chong was recalled by the defense. Both sides then rested. The Court ordered that this case be continued to May 28, 1935 at 8:30 a.m. for further trial. [93]

PROCEEDINGS AT FURTHER TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Tuesday, May 28, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendant Mookini with Mr. E. R. McGhee and Mr. Barry S. Ulrich, his counsel, and the defendant Lee Sau Chong with Mr. Barry S. Ulrich, his counsel. This case was called for further trial. It was stipulated that the jury heretofore empaneled and sworn to try the issues herein was present. Mr. Moore argued to the jury on behalf of the prosecution. At 10:35 a.m. Mr. Ulrich argued

on behalf of the defense. At 12:02 p.m. Mr. Moore argued on rebuttal. At 12:35 p.m. bailiffs were sworn to take charge of the jury and to take the jury to lunch. At 1:42 p.m. the Court instructed the jury. At 2:20 p.m. the jury retired to deliberate upon a verdict. At 6 p.m. the jury was taken to dinner. At 10:16 p.m. the jury returned the following verdict:

> "We, the Jury, duly empaneled and sworn in the above-entitled cause, do hereby find as follows: Robert K. Mookini, of Count One Guilty, of Count Two Not Guilty; Lee Sau Chong of Count One Guilty, of Count Two Guilty of the Indictment heretofore filed herein. Dated Honolulu, T. H., May 28, 1935.
>
> (s) William W. Jefferson, Foreman."

Counsel for the defense entered an exception to the verdict and gave notice of motion for new trial. The verdict was ordered filed. [94]

CONTINUANCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, June 10, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District, Attorney, Mr. Willson C. Moore, and also came the defendants by Mr. Barry S. Ulrich, their counsel. This case was continued to June 13,

1935 at 2 p.m. for hearing on a motion for new trial. [95]

PROCEEDINGS AT HEARING ON MOTION FOR NEW TRIAL,
~ Continuance.

From the Minutes of the United States District Court for the Territory of Hawaii.

Friday, June 14, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and also came the defendants Mookini and Lee Sau Chong with Mr. Barry S. Ulrich, their counsel. This case was called for hearing on a motion for new trial. Argument was had by respective counsel. The Court ordered that this case be continued to June 18, 1935 at 10 a.m. for further hearing. [96]

PROCEEDINGS AT FURTHER HEARING ON MOTION FOR NEW TRIAL.

From the Minutes of the United States District Court for the Territory of Hawaii.

Wednesday, June 19, 1935.

[Title of Court and Cause.]

On this day came the United States by its Assistant District Attorney, Mr. Willson C. Moore, and

also came the defendants with Mr. Barry S. Ulrich and Mr. Earl R. McGhee, their counsel. This case was called for hearing on a motion for new trial. Mr. McGhee filed affidavits. The motion for new trial was overruled and an exception noted as to each defendant. The Court ordered that the matter of sentence be continued to Saturday, June 22, 1935 at 9 a.m. [97]

PROCEEDINGS AT SENTENCE.

From the Minutes of the United States District Court for the Territory of Hawaii.

Saturday, June 29, 1935.

[Title of Court and Cause.]

On this day came the United States by its District Attorney, Mr. I. M. Stainback, and also came the defendants Lee Sau Chong and Robert K. Mookini with Mr. E. R. McGhee and Mr. Barry S. Ulrich, their counsel. This case was called for sentence of said defendants. Counsel for the defendants made a plea for clemency on behalf of said defendants. Mr. Stainback made a recommendation as to the sentences of said defendants. The Court ordered that the defendant Mookini pay a fine of $1,500.00 and that he be imprisoned in Oahu Prison for three years. The Court ordered that as to the first count the defendant Lee Sau Chong pay a fine of $1,500 and that he be imprisoned in Oahu Prison for three years; that as to the second count the defendant Lee Sau Chong pay a fine of $1,000.00 and that he be im-

prisoned in Oahu Prison for two years, said sentences to run consecutively. Costs were remitted. An exception to the sentences was noted and allowed. Counsel for the defendants gave notice of appeal. The Court ordered that bond of the defendant Mookini be fixed at $2500.00, a combined appearance and supersedeas bond. The Court ordered that appearance and supersedeas bond of the defendant Lee Sau Chong be fixed at $5,000.00. The defendants were allowed to Wednesday, July 3, 1935 at 12 noon to file bond. Mittimus was stayed to July 3, 1935. [98]

[Title of Court and Cause.]

VERDICT.

Filed May 28th 1935 at 10 o'clock and 16 minutes p.m. (s) Wm. F. Thompson, Jr., Clerk. [122]

We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find as follows:

ROBERT K. MOOKINI,

Of Count One Guilty

Of County Two Not Guilty

LEE SAU CHONG

Of Count One Guilty

Of Count Two Guilty

Of the Indictment heretofore filed herein.

Dated: Honolulu, T. H., May 28th, 1935.

(s) WILLIAM W. JEFFERSON

Foreman. [123]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL AND AFFIDAVIT OF BARRY S. ULRICH.

Filed Jun. 7, 1935 at 12 o'clock and 5 minutes p.m. Wm. F. Thompson, Jr., Clerk, by (s) E. Langwith, Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, Hawaii
Attorney for Lee SAU CHONG,
Defendant above-named. [124]

MOTION FOR NEW TRIAL.

Comes now LEE SAU CHONG, defendant above-named, and shows unto this Honorable Court that after trial duly had in the above-entitled matter, and on, to-wit: the 28th day of May, 1935, the jury in the above-entitled cause did return and enter its verdict against him, said defendant, of guilty on the first and second counts of the indictment herein, and said defendant now moves this Honorable Court that it do make and enter its order vacating and setting aside the said verdict of guilty and granting to this defendant a new trial in said cause, and as grounds for this, his said motion, said defendant shows unto this Honorable Court as follows:

I.

That defendant has suffered serious prejudice herein in the overruling and denial of his motion heretofore made herein for a severance and a trial

separate from the other defendants in said cause and in being forced and compelled against his will and wish to stand trial herein together with one of the other defendants in said cause, to-wit: Robert K. Mookini. [125]

II.

That defendant has suffered serious prejudice herein in the action of this Court in overruling defendant's demurrer to the indictment, wherein, among other things, it was claimed that it was impossible for said defendant to ascertain from said indictment in what manner it was claimed that he, together with three other defendants, had jointly participated in the making and presentment of fraudulent claims for payment, wherefore it was impossible for said defendant to prepare properly for trial.

III.

That this defendant suffered prejudice in that he was forced to trial without opportunity being given to acquire information vital to the preparation for trial as indicated in those paragraphs of the demurrer to the indictment herein showing how and in what respect said indictment was indefinite and uncertain and how and in what respects it was impossible to obtain information therefrom as to the nature of the crime charged against this defendant.

IV.

That this defendant has suffered prejudice justifying and requiring that the verdict heretofore

entered herein be vacated and set aside in that and because said verdict is wholly and completely unsupported by any evidence showing criminal intent on the part of this defendant.

V.

That the verdict of guilty against this defendant is directly contrary to the evidence in the case.

VI.

That the verdict of guilty against this defendant is contrary to the law. [126]

VII.

That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes and by said verdict has been found guilty of two crimes as the result of a single trial.

VIII.

That prejudice has been suffered and a new trial should be granted by reason of errors committed by the Judge on the trial of said cause in the reception of evidence offered by the United States and objected to by counsel for this defendant.

IX.

That error was committed in the reception of evidence in this case of the testimony given by the defendant Mookini before the Grand Jury of the

Territory of Hawaii, which transcript was received without any restriction upon its scope as evidence and as evidence against this defendant.

X.

That error was committed by the Court in refusing to permit defendant to introduce evidence indicating the true relation of the Government's witness Miles to this defendant and to the other defendant in this case on the ground that to do so would be to permit a showing to be made of a commission of a crime by the said Miles, although said witness Miles was not required to and did not claim any constitutional privilege against self-incrimination.

XI.

That prejudice has been suffered by reason of the error committed by this court in refusing to give defendant's requested instructions Nos. Four, Nine, Thirteen and Fourteen. [127]

XII.

That prejudice has been suffered by reason of the error committed in giving over defendant's objections Government's Instructions Nos. Two, Four, Five, Nine, Ten and Fourteen.

XIII.

That prejudice has been suffered and a new trial should be granted by reason of the denial by this Court of this defendant's Motion for Bill of Particulars, and in that defendant was forced to trial in the above-entitled cause without the information

sought in said Bill of Particulars to his said defendant's prejudice.

XIV.

That prejudice has been suffered and the verdict herein should be set aside and a new trial granted by reason of the fact that after the taking of evidence in said cause had been closed and said case, after full argument and instructions to the jury, had finally been submitted to the jury for its deliberation and determination, without the knowledge of or notice to this defendant or his counsel or anyone representing him, the Honorable S. C. Huber, presiding judge in said cause, in answer to an inquiry sent in from said jury, did make and send a certain statement of fact to said jury as to the number of men enrolled at the C.C.C. Camp, which fact as so stated did not appear in the evidence in the case and was based upon information acquired by said Judge entirely outside of the record of said case, which statement was in fact in conflict with evidence in the case, and which statement of fact made by said Judge to the jury without the knowledge or approval of defendant as aforesaid, was considered by said jury and operated in the deliberations of said jury and in its effect toward inducing the verdict thereafter rendered against this defendant, to defendant's most serious prejudice. [128]

XV.

That prejudice was suffered by this defendant and error committed in the refusal of the Court to

allow defendant's offer to prove with respect to the defendant and Government's witness, Cunningham, that said Cunningham had deliberately and wilfully shot and killed a defenseless, crippled, old man at Kailua on the Island of Oahu at a time shortly prior to the time that he took employment with the C.C.C. Camp at Schofield Barracks, Oahu.

XVI.

This defendant bases this, his motion for new trial, further upon errors committed by this Honorable Court on said trial which may not now be specifically referred to by reason of the fact that the transcript of the proceedings had and evidence taken on said trial is not yet available and cannot be referred to but by reference makes all acts and rulings of the Court heretofore excepted to on behalf of this defendant grounds for this motion for new trial.

THIS MOTION IS BASED upon the records and files, notes and transcript of the proceedings had herein, and upon the affidavit of Barry S. Ulrich, hereto attached and made a part hereof.

Dated at Honolulu, Hawaii, June 7, 1935.

LEE SAU CHONG,

Defendant.

By (s) BARRY S. ULRICH

His Attorney.

Territory of Hawii,
City and County of Honolulu—ss.

LEE SAU CHONG, being first duly sworn, on oath deposes and says: That he is the Lee Sau Chong, named as defendant and in the foregoing motion for a new trial in the above-entitled cause; that he has read the said Motion for new trial, knows the contents thereof, and that the allegations thereof are true, except as to those alleged on information and belief, as to them, he believes them to be true. [129]

(s) LEE SAU CHONG

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [130]

AFFIDAVIT OF BARRY S. ULRICH.

Territory of Hawaii,
City and County of Honolulu—ss.

BARRY S. ULRICH, being first duly sworn, on oath deposes and says: That he is an attorney at law, duly licensed to practice before the bar of the above-entitled court, and the Supreme Court of the United States; that he is and at all times herein mentioned has been attorney for Lee Sau Chong, and that he makes this affidavit in support of the said defendant, Lee Sau Chong's foregoing motion for new trial.

Affiant says that on, to-wit: The 6th day of June, 1935, he did interview the Honorable S. C. Huber, Judge of the above-entitled Court in the chambers of said Judge, and did inquire of said Judge whether or not, during the deliberations of the jury in the above-entitled cause and after said cause had been submitted to them, the said Judge had made or sent to said jury any statement of facts, and your affiant says that said Judge informed your affiant that while the jury was deliberating an inquiry was sent to him, said Judge, by said jury, seeking to be informed as to how many men there were at the C.C.C. Camp at Schofield Barracks on the Island of Oahu, and that he, said Judge, did thereupon secure the information from some source not indicated to your affiant and did send a statement to said Jury in the jury room, informing them that there were at the said C.C.C. Camp between one hundred eighty and two hundred men. [131] Affiant says that said Judge informed him that he had furnished the jury with this information and statement of facts because he felt that while the jury was entitled to the information sought for, its nature did not justify a re-opening of the case. Affiant is informed and believes and therefore alleges that the said information was sent to the jury deliberating in the jury room after both sides had rested in the trial and said cause had been submitted to the jury on instructions from

the Court without the knowledge or approval of either of the defendants on trial or of their counsel.

Further affiant sayeth not.

(s) BARRY S. ULRICH

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN

Notary Public, First Judicial Circuit, Territory of Hawaii. [132]

[Title of Court and Cause.]

AFFIDAVIT OF EARL R. McGHEE IN SUPPORT OF MOTION OF LEE SAU CHONG FOR NEW TRIAL.

Filed Jun. 19, 1935 at ..... o'clock and ..... minutes ..... m. Wm. F. Thompson, Jr., Clerk, by (s) Thos. P. Cummins, Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, Hawaii
Attorney for Lee Sau Chong,
Defendant above-named. [133]

Territory of Hawaii,
City and County of Honolulu—ss.

EARL R. McGHEE, being first duly sworn, on oath, deposes and says: That he is an attorney at law, duly licensed to practice in all the Courts of the Territory of Hawaii, and that he is and at all

times has been attorney for Robert K. Mookini, one of the defendants in the above-entitled cause.

Affiant says that, following the rendition of the verdict in this case finding defendant Mookini guilty on one count and the defendant Lee Chong guilty on both counts of the indictment herein, he was informed by one of the jurors, a member of the jury in said cause and which found said verdict, that after the submission of said cause to said jury for deliberation and determination upon instructions given by the Court at the conclusion of the trial and after said jury had been deliberating and unable to agree upon a verdict for a period of several hours, it was suggested by one or more of the jurors that an inquiry be made of the Judge that the jury be informed as to how many men there were at the Civilian Conservation Camp on May 12th, and at the time of the Mother's Day dinner referred to in the evidence in the case, and that said members of said jury desired said infor-
ma- [134] tion for such bearing as it might have upon the question of the probability or improbability of the delivery for use at said dinner of the items of four hundred pounds of pumpkin and four hundred pounds of squash referred to and set forth in count one of the indictment herein. Affiant says that he was informed by said juror and believes and upon such information and belief therefore further alleges that such inquiry was thereupon sent to the Honorable S. C. Huber, Judge in said cause, asking that said Judge do inform the

jury as to how many men there were at said Camp at said time, and that in response to said inquiry the Judge did send to said jury in the jury room a written statement setting forth and stating as a fact that there were at said Camp between one hundred eighty and two hundred men.

Affiant says that he was further informed by said juror and believes, and on such information and belief therefor alleges that said note, coming from said Judge, and the information therein was seen and was considered by certain of the members of said jury, and that it did have an effect with said members in inducing the bringing in of a verdict, said verdict being found and returned by said jury within an hour from the receipt of said information from said Judge, after said jury for a period of approximately nine hours prior thereto had been unable to agree upon a verdict, and that said information thus received by said jury from the Judge did definitely influence certain of said jury adversely to the defendants herein.

Affiant further says that the information thus furnished by the Court was, as indicated by the record in this case, inaccurate and misleading in that, whereas affiant was informed by said juror and alleges, upon such information and belief, that certain members of said jury were influenced by the information contained in said note for the reason that they were led to con- [135] clude that between one hundred eighty and two hundred men would not justify a delivery of the amount of pump-

kin and squash indicated, the fact was and is as shown by the record in this case that said Mother's Day meal was prepared for and served to some two hundred fifty persons.

Further than this affiant sayeth not save that this affidavit is made in support of that certain Motion for New Trial heretofore filed on behalf of defendant Lee Sau Chong herein.

(s) EARL R. McGHEE

Subscribed and sworn to before me this 19th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [136]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL AND AFFIDAVIT OF BARRY S. ULRICH.

Filed Jun. 7, 1935 at 12 o'clock and 05 minutes a.m. Wm. F. Thompson, Jr., Clerk, by (s) E. Langwith, Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Bldg.
Honolulu, Hawaii
Attorneys for Rokert K. Mookini,
Defendant above-named. [137]

MOTION FOR NEW TRIAL.

Comes now ROBERT K. MOOKINI, defendant above-named, and shows unto this Honorable Court that after trial duly had in the above-entitled matter, and on, to-wit: the 28th day of May, 1935, the jury in the above-entitled cause did return and enter its verdict against him, said defendant, of guilty on the first count of the indictment herein, and said defendant now moves this Honorable Court that it do make and enter its order vacating and setting aside the said verdict of guilty and granting to this defendant a new trial in said cause, and as grounds for this, his said motion, said defendant shows unto this Honorable Court as follows:

I.

That defendant has suffered serious prejudice herein in the action of this Court in overruling defendant's demurrer to the indictment, wherein, among other things, it was claimed that it was impossible for said defendant to ascertain from said indictment in what manner it was claimed that he, together with three other defendants, had jointly participated in the making and presentment of fraudulent claims for payment, wherefore it [138] was impossible for said defendant to properly prepare for trial.

II.

That this defendant suffered prejudice in that he was forced to trial without opportunity being given

to acquire information vital to the preparation for trial as indicated in those paragraphs of the demurrer to the indictment herein showing how and in what respect said indictment was indefinite and uncertain and how and in what respects it was impossible to obtain information therefrom as to the nature of the crime charged against this defendant.

III.

That this defendant has suffered prejudice justifying and requiring that the verdict heretofore entered herein be vacated and set aside in that and because said verdict is wholly and completely unsupported by any evidence showing criminal intent on the part of this defendant.

IV.

That the verdict of guilty against this defendant is directly contrary to the evidence in the case.

V.

That the verdict of guilty against this defendant is contrary to the law.

VI.

That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes. [139]

VII.

That prejudice has been suffered and a new trial should be granted by reason of errors committed

by the Judge on the trial of said cause in the reception of evidence offered by the United States and objected to by counsel for this defendant.

VIII.

That error was committed in the reception of evidence in this case of the testimony given by this defendant before the Grand Jury of the Territory of Hawaii, which transcript was received without any restriction upon its scope as evidence and as evidence against this defendant.

IX.

That error was committed by the Court in refusing to permit defendant to introduce evidence indicating the true relation of the Government's witness Miles to this defendant and to the other defendant in this case on the ground that to do so would be to permit a showing to be made of a commission of a crime by the said Miles, although said witness Miles was not required to and did not claim any constitutional privilege against self-incrimination.

X.

That prejudice has been suffered by reason of the error committed by this court in refusing to give defendant's requested instructions Nos. Four, Nine and Fourteen.

XI.

That prejudice has been suffered by reason of the error committed in giving over defendant's ob-

jections Government's Instructions Nos. Two, Four, Five, Nine, Ten and Fourteen.

XII.

That prejudice has been suffered and the verdict herein should be set aside and a new trial granted by reason of the fact that after the taking of evidence in said cause had been closed [140] and said case, after full argument and instructions to the jury, had finally been submitted to the jury for its deliberation and determination, without the knowledge of or notice to this defendant or his counsel or anyone representing him, the Honorable S. C. Huber, presiding judge in said cause, in answer to an inquiry sent in from said jury, did make and send a certain statement of fact to said jury as to the number of men enrolled at the C. C. C. Camp, which fact as so stated did not appear in the evidence in the case and was based upon information acquired by said Judge entirely outside of the record of said case, which statement was in fact in conflict with evidence in the case, and which statement of fact made by said Judge to the jury without the knowledge or approval of defendant as aforesaid, was considered by said jury and operated in the deliberations of said jury and in its effect toward inducing the verdict thereafter rendered against this defendant, to defendant's most serious prejudice.

XIII.

That prejudice was suffered by this defendant and error committed in the refusal of the Court to allow defendant's offer to prove with respect to the defendant and Government's witness, Cunningham, that said Cunningham had deliberately and wilfully shot and killed a defenseless, crippled, old man at Kailua on the Island of Oahu at a time shortly prior to the time that he took employment with the C. C. C. Camp at Schofield Barracks, Oahu.

XIV.

This defendant bases this, his motion for new trial further upon errors committed by this Honorable Court on said trial which may not now be specifically referred to by reason of the fact that the transcript of the proceedings had and evidence [141] taken on said trial is not yet available and cannot be referred to, but by reference makes all acts and rulings of the Court heretofore excepted to on behalf of this defendant grounds for his motion for a new trial.

This motion is based upon the records and files, and notes and transcript of the proceedings had herein, and upon the affidavit of Barry S. Ulrich, hereto attached and made a part hereof.

Dated at Honolulu, Hawaii, June 7, 1935.

ROBERT K. MOOKINI,
Defendant.

By (s) BARRY S. ULRICH
His Attorney.

Territory of Hawaii,
City and County of Honolulu.

ROBERT K. MOOKINI, being first duly sworn, on oath deposes and says: That he is the Robert K. Mookini named as defendant and in the foregoing motion for new trial; that he has read the same, knows the contents thereof, and that the allegations thereof are true, except as to those alleged on information and belief, and as to them, he believes them to be true.

(s) ROBERT K. MOOKINI

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public in and for the First Judicial Circuit, Territory of Hawaii. [142]

AFFIDAVIT OF BARRY S. ULRICH

Territory of Hawaii,
City and County of Honolulu—ss.

BARRY S. ULRICH, being first duly sworn, on oath deposes and says: That he is an attorney at law, duly licensed to practice before the bar of the above-entitled court, and the Supreme Court of the United States; that he is and at all times herein mentioned has been attorney for Robert K. Mookini, and that he makes this affidavit in support of the said defendant, Robert K. Mookini's foregoing motion for new trial.

Affiant says that on, to-wit: The 6th day of June, 1935, he did interview the Honorable S. C. Huber,

Judge of the above-entitled Court, in the chambers of said Judge, and did inquire of said Judge whether or not, during the deliberations of the jury in the above-entitled cause and after said cause had been submitted to them, the said Judge had made or sent to said jury any statement of facts, and your affiant says that said Judge informed your affiant that while said jury was deliberating an inquiry was sent to him, said Judge, by said jury, seeking to be informed as to how many men there were at the C. C. C. Camp at Schofield Barracks on the Island of Oahu, and that he, said Judge, did thereupon secure the information from some source not indicated to your affiant and did send a statement to said Jury in the jury room, informing them that there were at the said C. C. C. Camp between one hundred eighty and two hundred men. Affiant says that said Judge informed him that he had furnished the jury with this information and statement of facts because he felt that while the jury was entitled to the information sought for its nature did not justify a re-opening of the case. [143] Affiant is informed and believes and therefore alleges that the said information was sent to the jury deliberating in the jury room after both sides has rested in the trial and said cause had been submitted to the jury on instructions from the Court without the knowledge or approval of either of the defendants on trial or of their counsel.

Further than this affiant sayeth not.

(s) BARRY S. ULRICH

Subscribed and sworn to before me this 7th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [144]

[Title of Court and Cause.]

AFFIDAVIT OF EARL R. McGHEE IN SUPPORT OF MOTION OF ROBERT K. MOOKINI FOR NEW TRIAL.

Filed Jun. 19, 1935 at.....o'clock and.....minutes .....m.

WM. F. THOMPSON, JR.,
Clerk.
By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Robert K. Mookini,
Defendant above-named. [145]

Territory of Hawaii,
City and County of Honolulu—ss.

EARL R. McGHEE, being first duly sworn, on oath deposes and says: That he is an attorney at law, duly licensed to practice in all the Courts of the Territory of Hawaii, and that he is and at all

times has been attorney for Robert K. Mookini, one of the defendants in the above-entitled cause.

Affiant says that, following the rendition of the verdict in this case finding defendant Mookini guilty on one count and the defendant Lee Chong guilty on both counts of the indictment herein, he was informed by one of the jurors, a member of the jury in said cause and which found said verdict, that after the submission of said cause to said jury for deliberation and determination upon instructions given by the Court at the conclusion of the trial and after said jury had been deliberating and unable to agree upon a verdict for a period of several hours, it was suggested by one or more of the jurors that an inquiry be made of the Judge that the jury be informed as to how many men there were at the Civilian Conservation Camp on May 12th, and at the time of the Mother's Day dinner referred to in the evidence [146] in the case, and that said members of said jury desired said information for such bearing as it might have upon the question of the probability or improbability of the delivery for use at said dinner of the items of four hundred pounds of pumpkin and four hundred pounds of squash referred to and set forth in count One of the indictment herein. Affiant says that he was informed by said juror and believes and upon such information and belief therefore further alleges that such inquiry was thereupon sent to the Honorable S. C. Huber, Judge in said cause, asking that said Judge do inform the jury as to how many

men there were at said Camp at said time, and that in response to said inquiry the said Judge did send to said jury in the jury room a written statement setting forth and stating as a fact that there were at said Camp between one hundred eighty and two hundred men.

Affiant says that he was further informed by said juror and believes, and on such information and belief therefore alleges that said note, coming from said Judge, and the information therein was seen and was considered by certain of the members of said jury, and that it did have an effect with said members in inducing the bringing in of a verdict, said verdict being found and returned by said jury within an hour from the receipt of said information from said Judge, after said jury for a period of approximately nine hours prior thereto had been unable to agree upon a verdict, and that said information thus received by said jury from the Judge did definitely influence certain of said jury adversely to the defendants herein.

Affiant further says that the information thus furnished by the Court was, as indicated by the record in this case, inaccurate and misleading in that, whereas affiant was informed by said juror and alleges, upon such information and belief, that certain members of said jury were influenced by the information contained in said note for the reason that they were led to con- [147] clude that between one hundred eighty and two hundred men would not justify a delivery of the amount of pumpkin and

squash indicated, the fact was and is as shown by the record in this case that said Mother's Day meal was prepared for and served to some two hundred fifty persons.

Further than this affiant sayeth not save that this affidavit is made in support of that certain Motion for New Trial heretofore filed on behalf of defendant Robert K. Mookini herein.

(s) EARL R. McGHEE

Subscribed and sworn to before me this 19th day of June, 1935.

[Seal] (s) MADELEINE L. HAYDEN
Notary Public, First Judicial Circuit, Territory of Hawaii. [148]

[Title of Court and Cause.]

BOND

Filed Jul. 5, 1935 at 1 o'clock and 40 minutes P. M.

WM. F. THOMPSON, Jr.,
Clerk.
By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH
317 Dillingham Building
Honolulu, T. H.
Attorney for Defendant,
Robert K. Mookini. [149]

KNOW ALL MEN BY THESE PRESENTS:

That, we, ROBERT K. MOOKINI, as Principal and Manuel Freitas, Marie M. Mookini and Stanley T. Miyamoto as Sureties are held and firmly bound unto the United States of America in the full sum of Twenty Five Hundred Dollars ($2,500.00) for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

WHEREAS, lately at the April Term A. D., 1935, of the District Court for the United States in and for the District and Territory of Hawaii, judgment and sentence were made and entered against the said ROBERT K. MOOKINI, defendant above named, and

WHEREAS, notice has been given of appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to secure a reversal of said judgment and sentence, and

WHEREAS, the Honorable S. C. Huber, Judge of said District Court, did regularly order that a supersedeas and bail bond be given in the sum of Twenty Five Hundred Dollars ($2,500.00) pending said appeals. [150]

NOW, THEREFORE, the condition of the above obligation is such that if the said Robert K. Mookini shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide

by and obey all orders made by said Circuit Court in said cause, and shall pay any fines, charges and all costs imposed by the judgment of said District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a re-trial of said cause, and abide by and obey all the orders made by said District Court provided the judgment and sentence made against him shall be reversed by said Circuit Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

IN WITNESS WHEREOF the above bounden principal and sureties have hereto affixed their hands this 2nd day of July, 1935.

(s) ROBERT K. MOOKINI
Principal.

(s) MANUEL FREITAS
(s) MARIE M. MOOKINI
(s) STANLEY T. MIYAMOTO
Sureties [151]

Territory of Hawaii,
City and County of Honolulu—ss.

MARIE M. MOOKINI, being first duly sworn on oath deposes and says: That she is the Marie M. Mookini named as Surety and who signed the foregoing Bond and that she is worth the sum of Twenty Five Hundred Dollars ($2,500.00) over and above

all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

(s) MARIE M. MOOKINI

Subscribed and sworn to before me this 2nd day of July, 1935.

[Seal] (s) TATSUYO HIRASHIMA
Notary Public, First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

STANLEY T. MIYAMOTO, being first duly sworn on oath deposes and says: That he is the Stanley T. Miyamoto named as Surety and who signed the foregoing Bond and that he is worth the sum of Twenty Five Hundred Dollars ($2,500.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

(s) STANLEY T. MIYAMOTO

Subscribed and sworn to before me this the 2nd day of July, 1935.

[Seal] (s) TATSUYO HIRASHIMA
Notary Public, First Judicial Circuit, Territory of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

MANUEL FREITAS, being first duly sworn on oath deposes and says: That he is the Manuel Freitas, named as Surety and who signed the fore-

going Bond and that he is worth the sum of Twenty Five Hundred Dollars ($2,500.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

(s) MANUEL FREITAS

Subscribed and sworn to before me this 2nd day of July, 1935.

[Seal] (s) TATSUYO HIRASHIMA
Notary Public, First Judicial Circuit, Territory of Hawaii.

Approved as to form:

(s) I. M. STAINBACK
United States Attorney.

Approved as to amount and sufficiency of surety:

(s) S. C. HUBER
Judge, United States District Court. [152]

AFFIDAVIT

Territory of Hawaii
City and County of Honolulu—ss.

STANLEY T. MIYAMOTO, being first duly sworn on oath deposes and says: That he is the owner of the following listed property, to-wit:

Two parcels of land on the Island of Hawaii known as the Olaa Summer Lots, having a taxable value for 1935 of $500.00,

One Waiakea Beach Lot, South Hilo, Hawaii, having an assessed value for 1935 of $2,000.00.

$1,000.00 on deposit with the Bank of Bishop, Honolulu, T. H.

One Sport Plymouth Coupe, Model 1933, with a market value of $550.00,

That said property has an aggregate value of approximately $4,050.00, and that the same is free and clear of all liens and encumbrances whatsoever.

(s) STANLEY T. MIYAMOTO

Subscribed and sworn to before me this the 5th day of July, 1935.

[Seal] (s) WALTER H. YOKOTE
Notary Public, First Judicial Circuit, Territory of Hawaii. [153]

AFFIDAVIT

Territory of Hawaii,
City and County of Honolulu—ss.

MARIE M. MOOKINI, being first duly sworn on oath deposes and says that she is the owner of the following listed property, viz:

Lot 50, Lunalilo Tract, Clio and Piikoi Streets, having an area of approximately 6900 square feet, with an assessed value for the year 1935 of $1144.00,

One Packard Club Sedan, Model 1930, with a present day value of $500.00,

75 shares, Commercial Credit Corporation, with a value of $750.00,

100 shares, U. S. Petroleum, worth about $100.00,

5 shares, American Security Bank, worth $100.00,

Undivided 1/7 interest in land on Kauai, worth $300.00;

that said property has an aggregate value of approximately $2900.00, that the same is free and clear of all liens and encumbrances whatsoever.

(s) MARIE M. MOOKINI

Subscribed and sworn to before me this the 3rd day of July, 1935.

[Seal] (s) WALTER H. YOKOTE
Notary Public, First Judicial Circuit, Territory of Hawaii. [154]

AFFIDAVIT.

Territory of Hawaii,
City and County of Honolulu.—ss.

MANUEL FREITAS, being first duly sworn on oath deposes and says: That he is the owner in fee simple of two parcels of land situate at 1737 Houghtailing Road, Honolulu, having an area of 11,220 square feet with two houses thereon, having a total assessed value for the year 1935 of $2,590.00; that this property is free and clear of all liens and encumbrances whatsoever.

/s/ MANUEL FREITAS.

Subscribed and sworn to before me this the 3rd day of July, 1935.

[Seal] /s/ WALTER H. YOKOTE,
Notary Public, First Judicial Circuit, Territory of Hawaii. [155]

[Title of Court and Cause.]

BOND.

Filed Jul. 5, 1935 at 2 o'clock and 05 minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH,
317 Dillingham Building,
Honolulu, T. H.,
Attorney for defendant,
Lee Sau Chong. [156]

KNOW ALL MEN BY THESE PRESENTS:

That, we, LEE SAU CHONG, as Principal and L. C. Yee Shee and HEU LING SEE KYAU, as Sureties are held and firmly bound unto the United States of America in the full sum of Five Thousand Dollars ($5,000.00) for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

WHEREAS, lately at the April Term A. D., 1935, of the District Court for the United States in and for the District and Territory of Hawaii, judgment and sentence were made and entered against the said LEE SAU CHONG, defendant above named, and

WHEREAS, notice has been given of appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to secure a reversal of said judgment and sentence, and

WHEREAS, the Honorable S. C. Huber, Judge of said District Court, did regularly order that a supersedeas and bail bond be given in the sum

of Five Thousand Dollars ($5,000.00) pending said appeals. [157]

NOW, THEREFORE, the condition of the above obligation is such that if the said Lee Sau Chong shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide by and obey all orders made by said Circuit Court in said cause, and shall pay any fines, damages and all costs imposed by the judgment of said District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a re-trial of said cause and abide by and obey all the orders made by said District Court provided the judgment and sentence made against him shall be reversed by said Circuit Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

IN WITNESS WHEREOF the above bounden principal and sureties have hereto affixed their hands this 3rd day of July, 1935.

/s/ LEE SAU CHONG,
Principal.

/s/ L. C. YEE SHEE,
/s/ HEU LING SEE KYAU,
Sureties. [158]

Territory of Hawaii
City and County of Honolulu—ss.

L. C. YEE SHEE being first duly sworn on oath deposes and says: That she is the L. C. Yee named as Surety and who signed the foregoing Bond and that she is worth the sum of Five Thousand Dollars ($5,000.00) over and above all just debts and liabilities in property, situate in the Territory of Hawaii and subject to execution.

/s/ L. C. YEE SHEE.

Subscribed and sworn to before me this 3rd day of July, 1935.

[Seal] /s/ TIM S. ING,
Notary Public, 1st Judicial Cir. Territory of Hawaii.

Territory of Hawaii
City and County of Honolulu—ss.

HEU LING SEE KYAU being first duly sworn on oath deposes and says: That she is the Heu Ling See Kyau named as Surety and who signed the foregoing Bond and that she is worth the sum of Five Thousand Dollars ($5,000.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

/s/ HEU LING SEE KYAU.

Subscribed and sworn to before me this 3rd day of July, 1935.

[Seal] /s/ TIM S. ING,
Notary Public, 1st Judicial Circuit, Territory of Hawaii.

Approved as to form:

/s/ I. M. STAINBACK,
United States Attorney.

Approved as to amount and sufficiency of surety:

/s/ S. C. HUBER,
Judge, United States
District Court. [159]

[Title of Court and Cause.]

NOTICE OF APPEAL.

Filed Sep. 27, 1935, at 4 o'clock and — minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building,
Honolulu, Hawaii,
Attorneys for defendants-appellants. [160]

To: THE UNITED STATES OF AMERICA, and to INGRAM M. STAINBACK, its attorney:

PLEASE TAKE NOTICE that ROBERT K. MOOKINI and LEE SAU CHONG, two of the defendants above-named, hereby appeal to the United States *District* Court of Appeals for the Ninth Circuit, from the verdict, decision, judgment and sentence heretofore entered herein with respect to said defendants on the 29th day of June, 1935.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG.
By /s/ BARRY S. ULRICH,
By /s/ EARL R. McGHEE,
Their Attorneys. [161]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Filed Sep. 27, 1935 at 4 o'clock and — minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building,
Honolulu, Hawaii,
Attorneys for Appellants.

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

/s/ WILLSON C. MOORE,
Ass't. U. S. Attorney, Hawaii.
[162]

Come now the above-named ROBERT K. MOOKINI and LEE SAU CHONG, two of the above-named defendants, by and through their attorneys, Barry S. Ulrich and Earl R. McGhee, and feeling themselves aggrieved by the judgment of this Court made and entered herein on the 29th day of June, 1935, where and whereby the said defendants were

sentenced to be imprisoned and fined as set forth in said judgment made and entered herein by the Court in said cause, to which judgment reference is hereby made for greater particularity, and say that petitioners are advised by counsel, and that, therefore, they aver that there was and is manifest error in the record and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury of your petitioners, all of which errors will be fully made to appear by an examination of the Assignment of Errors and Bill of Exceptions filed herein and presented herewith.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants above-named.
By /s/ BARRY S. ULRICH,
By /s/ EARL R. McGHEE,
Their Attorneys. [163]

The foregoing appeal is allowed. The supersedeas bond in the sum as heretofore specified and filed and a cost bond on appeal in the sum of Five Hundred Dollars ($500.00) are approved.

Dated at Honolulu, Hawaii, September 27, 1935.

/s/ S. C. HUBER,
Judge, District Court of the United States in and for the District and Territory of Hawaii. [164]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Filed Sep. 27, 1935 at 4 o'clock and — minutes p. m. /s/ Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building,
Honolulu, Hawaii,
Attorneys for Appellants.

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

/s/ WILLSON C. MOORE,
Ass't. U. S. Attorney, Hawaii.

[165]

Come now ROBERT K. MOOKINI and LEE SAU CHONG, two of the defendants above-named, and appellants in the above-entitled cause, and say that in the record, proceedings, verdict, judgment and decision of the United States District Court for the District and Territory of Hawaii in said cause lately pending in said court, there are manifest, material and prejudicial errors, and said Robert K. Mookini and Lee Sau Chong now make, file and present the following Assignment of Errors, upon each of which they jointly and severally rely, to-wit:

ASSIGNMENT NO. I.

The court erred in overruling the demurrers to the indictment herein filed by defendants Robert K. Mookini and Lee Sau Chong.

ASSIGNMENT NO. II.

The court erred in overruling the motion of defendant Lee Sau Chong that his cause as a defendant in said action be severed for the purpose of trial from the cause of the other defendants herein. [166]

ASSIGNMENT NO. III.

The court erred in refusing to permit counsel for Robert K. Mookini and Lee Sau Chong, upon cross-examination of witness for the prosecution, William E. Miles, to prove by said witness, after due offer was made of such proof, that said witness had converted to his own use $240.00 belonging to the Civilian Conservation Corps fund; that defendant Mookini became aware of such conversion and that thereupon said witness placed charges against said Mookini resulting in the dismissal of the latter from the services of the United States Government as an employee at the Civilian Conservation Corps camp at Schofield Barracks, which action on the part of said witness showed a distinct reason for an animus on the part of said witness with respect to said Mookini and indicated the position of witness with respect to transactions involved in the indictment herein, showing why witness made charges against

said Mookini, and which proof affected the credibility of said witness by showing his interest and bias with respect to his co-defendants.

ASSIGNMENT NO. IV.

That the court erred in refusing counsel for defendants Robert K. Mookini and Lee Sau Chong to prove upon cross-examination of witness for the prosecution, William E. Miles, the circumstances under which said witness borrowed $200.00 from defendant Lee Sau Chong and gave said defendant his promissory note therefor.

ASSIGNMENT NO. V.

The court erred in permitting and allowing witness for the prosecution, John E. Cunningham, to testify over the objection of counsel for the defendants as to conversations had between said witness and defendant Lee Sau Chong, not in the presence of said Defendant Robert K. Mookini, concerning statements made and conversation had between witness and said Mookini. [167]

ASSIGNMENT No. VI.

The court erred in permitting and allowing said witness for the prosecution, John E. Cunningham, to testify over the objection of counsel for the defendants, as to conversations had between said witness and Robert K. Mookini on or about June 4, 1934.

ASSIGNMENT No. VII.

The court erred in permitting and allowing witness for the prosecution, John E. Cunningham, upon his direct examination, and over the objection of counsel for the defendants, to testify to the effect that witness and defendants Robert K. Mookini and Lee Sau Chong for the month of June, 1934, had made and presented to the United States Government a certain fictitious voucher or claim for approximately $72.00, such claim allegedly representing supplies furnished defendant Mookini by defendant Lee Sau Chong.

ASSIGNMENT No. VIII.

The court erred in refusing and not permitting counsel for defendants, Robert K. Mookini and Lee Sau Chong, upon the cross-examination of witness for the prosecution, John E. Cunningham, to prove by said witness, after offer of such proof had been made, that said witness had in April or May, 1933, killed a man and that said killing was inquired into by a Territorial Grand Jury which did not return an indictment against said witness.

ASSIGNMENT No. IX.

The court erred in permitting and allowing witness for the prosecution Charles I. Deville, to testify on direct examination and over the objection of counsel for the defendants, as to statements made and conversations had by witness and Lee Sau Chong with reference to certain alleged ficti-

tious items listed upon United States Exhibits "D", "G" and "J". [168]

ASSIGNMENT No. X.

The Court erred in refusing, after both plaintiff and defendants had rested their respective cases, to enter an order directing a verdict of "not guilty" as to said defendants Robert K. Mookini and Lee Sau Chong.

ASSIGNMENT No. XI.

The court erred in permitting and allowing the plaintiff, upon the cross-examination of defendant Robert K. Mookini, to examine said witness upon a portion only of the testimony previously given by said witness before the United States Grand Jury which returned the indictment herein against said defendant.

ASSIGNMENT No. XII.

That said court erred in permitting and allowing the plaintiff to produce and introduce in evidence at the trial herein a transcript of the notes of testimony given by defendant Robert K. Mookini before the United States Grand Jury which returned the indictment herein against said defendant.

ASSIGNMENT No. XIII.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"You are instructed that the Camp Director of the Civilian Conservation Corps is an officer in the civil service of the United States. You are further instructed that it appears from the evidence in this case that said Camp Director was charged with the duty of disbursing what is known as the mess fund, and there is further evidence that he also handled a canteen fund, the mess fund being a Government realization while the canteen fund belonged wholly to the members of the Civilian Conservation Corps, and said canteen fund was not a fund belonging to the Government of the United States."

[169]

ASSIGNMENT No. XIV.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"You are instructed that the word 'fraud' means the intentional employment of any cunning, deception or artifice used to circumvent, cheat or deceive another."

ASSIGNMENT No. XV.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime,

and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts."

ASSIGNMENT No. XVI.

The court erred in giving to the jury, over the objections of these defendants, the following instruction on behalf of the plaintiff:

"A reasonable doubt is not a fanciful doubt, but such a doubt raised by the evidence as a reasonable man can give a reason for. The law does not require that the government shall prove an accused guilty beyond all possible doubt, but the law does require the government shall prove each and every one of the material allegations of the indictment to your satisfaction and beyond all doubt that is reasonable, in other words, it must satisfy you as reasonable men of the guilt of the accused and satisfy you beyond a reasonable doubt.

"You are the exclusive judges of the credibility of the witnesses and of the weight to be attached to their testimony, but the law you must take from the court whether or not you, in your own minds, believe the court to be correct. To pass upon the law is the exclusive

province of the court, but to pass upon the facts and apply to such facts the law as given by the court is the exclusive province of the jury, and in this connection I instruct you that, although the Judge legally may comment upon the facts and give his opinion, nevertheless that is the opinion of the Judge only and the final responsibility of deciding the facts rests with you. [170]

"In determining the credibility of a witness you may take into consideration his interest, bias, prejudice, motives, or feelings of revenge, if any, his manner of testifying, his demeanor on the witness stand and the probability or improbability of the story told by him, or any other thing which a reasonable man would consider in determining whether or not he believed a witness. If you believe that any witness has wilfully testified falsely or wilfully misled you as to any material fact in the case, you may disregard his entire testimony except such part as may be corroborated by other credible evidence, or believed by you to be true."

ASSIGNMENT No. XVII.

The court erred in giving to the jury, over the objections of these defendants the following instruction on behalf of the plaintiff:

"Gentlemen of the Jury, you are instructed that if you find and believe from the evidence beyond a reasonable doubt that the defendants

named in this indictment, or any of them, agreed between themselves or conspired together to make, cause to be made, present or cause to be presented for approval or payment the vouchers covered by Counts I or II of the indictment, and that in pursuance thereof said vouchers, or either of them, were so made, presented or caused to be presented with intent to defraud the United States Government or any department thereof, then I charge you that any act or declaration of such agreeing defendant or defendants in furtherance of said common purpose done or said by him or them in the absence of any other defendant is legal evidence in this case against each of the said agreeing defendants and may be considered by you in finding your verdict."

ASSIGNMENT No. XVIII.

The court erred in refusing to give at the request of the defendants the following instruction to the jury:

"You, gentlemen of the jury, are the sole and exclusive judges of the sufficiency of the evidence and of the credibility of the witnesses in this case, and in passing upon the credibility of such witnesses you have a right, and it is your duty, to take into consideration their prejudices, motives, feelings of revenge, the inducements held out to them to testify, or any other influences surrounding them which may

have operated to induce them to testify in a particular way, if any such have been shown by the evidence in this case." [171]

ASSIGNMENT No. XIX.

The court erred in refusing to give at the request of the defendants the following instruction to the jury:

"If you believe from the evidence that the certain items appearing in Counts I and II of said indictment herein were not actually delivered to said Civilian Conservation Camp, but do believe that other articles of equal value were delivered to said camp by said Lee Chong Company, then it is your duty to find the defendants not guilty."

ASSIGNMENT No. XX.

The Court erred in refusing to give at the request of the defendants the following instruction to the jury:

"I further instruct you that the purpose of the statute or law under which these defendants have been indicted and prosecuted is to prohibit and punish the drawing of money from the Treasury of the United States without having rendered legal and authorized equivalents therefor."

ASSIGNMENT No. XXI.

The court erred in refusing to give at the request of the defendants the following instruction

"And I further instruct you that if you believe from the evidence that Defendant Mookini had no knowledge of the changes or alterations which were made in the Mother's Day bill until on or about September 13, 1934, and had no knowledge with respect to the changes or alterations which were made in the Labor Day bill until on or about October 5, 1934, then you will find this defendant not guilty."

ASSIGNMENT No. XXII.

Said court erred in giving its judgment and imposing sentence herein with respect to defendants Robert K. Mookini and Lee Sau Chong.

ASSIGNMENT No. XXIII.

The Court erred in refusing to grant the motion of defendant Robert K. Mookini for a new trial in said cause.

ASSIGNMENT No. XXIV.

The court erred in refusing to grant the motion of defendant Lee Sau Chong for a new trial in said cause. [172]

ASSIGNMENT No. XXV.

The court erred in giving information to and communicating with the jury as to facts or evidence relating to said cause while said jury was deliberating of its verdict in said cause, such information being given or communication had in

the absence of counsel for the defendants Robert K. Mookini and Lee Sau Chong.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG.
By /s/ BARRY S. ULRICH,
E. M.
By /s/ EARL R. McGHEE,
Their Attorneys. [173]

[Title of Court and Cause.]

CITATION ON APPEAL

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building
Honolulu, Hawaii
Attorneys for Appellants

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

WILLSON C. MOORE
Ass't U. S. Attorney, Hawaii. [174]

The United States of America—ss.

The President of the United States of America and Ingram M. Stainback, Its Attorney: GREETING:

YOU ARE HEREBY CITED and ADMONISHED to be and appear at the United States Cir-

cuit Court of Appeals for the Ninth Circuit to be held in the City and County of San Francisco, State of California, within thirty (30) days from the date of this return, pursuant to an order allowing appeal filed in the Clerk's Office of the United States District Court for the District and Territory of Hawaii wherein Robert K. Mookini and Lee Sau Chong are appellants and you are the appellee, to show cause, if any there be, why the verdict, judgment and sentence in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States of America, this 27th day of September, A. D. 1935, and of the independence of the United States of America the Three Hundred Fifty-fifth.

[Seal] S. C. HUBER

Judge, United States District Court of the District and Territory of Hawaii. [175]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

Filed Sep. 27, 1935 at 4 o'clock and.....minutes p. m.

(s) WM. F. THOMPSON, Jr.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Appellants

Receipt of a copy of the within is hereby acknowledged this 27th day of September, 1935.

(s) WILLSON C. MOORE
Ass't U. S. Attorney, Hawaii. [176]

[Title of Court and Cause.]

To the Clerk of the Above-entitled Court:

Sir:

Please prepare transcript on Petition for Appeal to the United States Circuit Court of Appeals for the Ninth Circuit to be composed of the following papers:

1. Indictment.
2. Demurrer of Robert K. Mookini.
3. Demurrer of Lee Sau Chong.
4. Order overruling said demurrers.
5. Exceptions to order overruling said demurrers.
6. Motion for bill of particulars.
7. Order denying motion for bill of particulars.
8. Motion for Severance and affidavit.
9. Order overruling motion for severance.
10. Instructions given for the plaintiff.
11. Instructions given for the defendants.
12. Verdict.
13. Judgment and sentence.
14. Motion for new trial by defendants Robert K. Mookini and Lee Sau Chong and affidavits in support thereof.
15. Order overruling motion for new trial. [177]
16. Exceptions to ruling on motion for new trial.

16a. Notice of Appeal.
17. Petition for appeal and order allowing appeal.
18. Recognizance bond.
19. Bond for costs on appeal.
20. Citation on appeal.
21. Assignments of errors.
22. Bill of exceptions and order allowing bill of exceptions.
23. Praecipe.
24. All minutes and entries made by you or anyone else in the above-entitled cause; all exhibits, transcript of testimony, and all other pleadings and exhibits filed in this cause not specifically mentioned above.

Dated at Honolulu, Hawaii, this 27th day of September, 1935.

Respectfully requested,
ROBERT K. MOOKINI and
LEE SAU CHONG,
Appellants
By BARRY S. ULRICH
(s) E. M.
By (s) EARL R. McGHEE
Their attorneys. [178]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Oct. 12, 1935 at 11 o'clock and 17 minutes a. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building
Honolulu, T. H.
Attorney for Appellants [179]

On reading and filing of the annexed consent to the entry of this order, dated this the 12th day of October, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 12th day of November, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 12th day of November, 1935.

Dated at Honolulu, T. H., this the 12th day of October, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [180]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., this the 12th day of October, 1935.

UNITED STATES OF AMERICA,
Plaintiff
By (s) WILLSON C. MOORE
Assistant United States Attorney.
ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants,
By BARRY ULRICH (s) E. M.
and
(s) EARL R. McGHEE
Attorneys for Appellants. [181]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Nov. 12, 1935 at .....O'clock and .....minutes.....m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE,
Dillingham Building
Honolulu, T. H.
Attorneys for Appellants. [182]

On reading and filing of the annexed consent to the entry of this order, dated this the 12th day of November, 1935, by the attorneys for the United

States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 23rd day of November, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 23rd day of November, 1935.

Dated at Honolulu, T. H., this the 12th day of November, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [183]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., this the 12th day of November, 1935.

UNITED STATES OF AMERICA,
Plaintiff,
By (s) WILLSON C. MOORE
Assistant United States Attorney.
ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants,
By (s) BARRY S. ULRICH and
(s) EARL R. McGHEE
Attorneys for Appellants. [184]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Nov. 23, 1935 at 11 o'clock and 23 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.
By (s) E. LANGWITH
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for defendants, Robert K. Mookini and Lee Sau Chong. [185]

On reading and filing of the annexed consent to the entry of this order, dated this 22nd day of November, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above-named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 30th day of November, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 30th day of November, 1935.

Dated at Honolulu, T. H., this 22nd day of November, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [186]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., November 22, 1935.

UNITED STATES OF AMERICA,
Plaintiff

By (s) WILLSON C. MOORE
Assistant United States Attorney

ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants,

By (s) BARRY S. ULRICH and
(s) E. R. McGHEE
Their Attorneys. [187]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Nov. 30, 1935 at 10 o'clock and 30 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.

By (s) E. LANGWITH
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Robert K. Mookini and Lee Sau Chong. [188]

On reading and filing of the annexed consent to the entry of this order, dated this 29th day of November, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants above-named,

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 14th day of December, 1935, and that the term of this Court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 14th day of December, 1935.

Dated at Honolulu, T. H., this 29th day of November, 1935.

(s) S. C. HUBER
Judge, United States District Court for the Territory of Hawaii. [189]

We hereby consent to the entry of the above order.

Dated at Honolulu, T. H., November 29, 1935.

UNITED STATES OF AMERICA,
Plaintiff,

By (s) WILLSON C. MOORE
Assistant United States Attorney
ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants

By (s) BARRY S. ULRICH and
(s) E. R. McGHEE
Their attorneys. [190]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS.

Filed Dec. 14, 1935 at 11 o'clock and 5 minutes a. m.

WM. F. THOMPSON, JR.,
Clerk.

By (s) E. LANGWITH
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Attorneys for defendants,
Mookini and Lee Chong [191]

On reading and filing of the annexed consent to the entry of this order, dated this 14th day of December, 1935, by the attorneys for the United States of America and for Robert K. Mookini and Lee Sau Chong, two of the defendants-above-named;

IT IS HEREBY ORDERED that the time for said defendants, Robert K. Mookini and Lee Sau Chong, to procure to be settled and filed their Bill of Exceptions heretofore lodged herein with the Clerk of this Court on the 27th day of September, 1935, be and the same is hereby extended to and including the 21st day of December, 1935, and that the term of this court at which said cause was tried and judgment and sentence herein entered be and the same hereby is extended to and including the 21st day of December, 1935.

Dated at Honolulu, T. H., this 14th day of December, 1935.

(s) S. C. HUBER
Judge of the above-entitled court. [192]

We hereby consent to the entry of the above and foregoing order.

Dated at Honolulu, T. H., December 14, 1935.

UNITED STATES OF AMERICA,
Plaintiff.

By (s) WILLSON C. MOORE
Assistant United States Attorney

ROBERT K. MOOKINI and
LEE SAU CHONG,
Defendants.

By (s) BARRY S. ULRICH and
(s) EARL McGHEE
Their Attorneys. [193]

[Title of Court and Cause.]

COST BOND

Filed Nov. 13, 1935 at 2 o'clock and 30 minutes p. m.

WM. F. THOMPSON, JR.,
Clerk.

By (s) THOS. P. CUMMINS,
Deputy Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building,
Honolulu, Hawaii.
Attorneys for Appellants. [194]

KNOW ALL MEN BY THESE PRESENTS, That we, ROBERT K. MOOKINI and LEE SAU CHONG, as principals and GOO WAN HOY and JOSEPH E. LOPES, as sureties, all of Honolulu, City and County of Honolulu, Territory of Hawaii, are held and firmly bound unto the plaintiff in the above-entitled cause in the sum of Five Hundred ($500.00) Dollars, to be paid to the said plaintiff, for the payment of which well and truly we bind ourselves and our respective heirs, executors and administrators, jointly and severally by these presents.

The condition of this obligation is such that:

WHEREAS, the above-named Robert K. Mookini and Lee Sau Chong, two of the defendants above-named, have taken an appeal from the District Court of the United States in and for the District

of Hawaii, to the United States Circuit Court of Appeals for the Ninth Circuit, to review the verdict entered herein on the 28th day of May, 1935, and the judgment and sentence made and entered herein on the 29th day of June, 1935:

NOW, THEREFORE, if the above-named Robert K. Mookini and Lee Sau Chong shall prosecute their appeal with effect and shall answer all costs if they fail to make good their appeal, then this obligation shall be void; otherwise to remain in full force [195] and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at Honolulu, T. H., this the 13th day of October, 1935.

[Seal] (s) ROBERT K. MOOKINI
[Seal] (s) LEE SAU CHONG
Principals
[Seal] (s) GOO WAN HOY
[Seal] (s) JOS. E. LOPES
Sureties

Taken and acknowledged before me the day and year first above written.

[Seal] (s) WM. F. THOMPSON, JR.,
Clerk, United States District Court for the Territory of Hawaii.

Territory of Hawaii
City and County of Honolulu—ss.

GOO WAN HOY, and JOSEPH E. LOPES, being each first duly sworn, on oath depose and say: That they are resident freeholders of Honolulu,

City and County of Honolulu, *Territory, and* have assets and real property situated within the Territory of Hawaii and within said City and County subject to execution and that they are worth in real and personal property within the Territory of Hawaii more than double the amount of the penalty specified in said bond, over and above all their debts, liabilities and property exempt from execution.

(s) GOO WAN HOY
(s) JOS. E. LOPES

Subscribed and sworn to before me this the 13th day of October, 1935.

(s) WM. F. THOMPSON, JR.,
Clerk, United States District Court, Territory of Hawaii. [196]

[Title of Court and Cause.]

BILL OF EXCEPTIONS

Filed Dec. 21, 1935 at 10 o'clock and 35 minutes a. m.

(s) WM. F. THOMPSON, JR.,
Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
317 Dillingham Building
Honolulu, Hawaii
Attorneys for Defendants-Appellants. [197]

Be it remembered that the above-entitled cause came on duly to be heard in the above-entitled court on the 3rd day of April, 1935, Honorable Seba C.

Huber, one of the Judges of said court, presiding, for hearing on the indictment in the above-entitled cause, and the plaintiff being represented by Willson C. Moore, assistant United States attorney, and the defendants Robert K. Mookini and Lee Sau Chong being present in court and represented by their counsel, Barry S. Ulrich and Earl R. McGhee, and thereupon the following proceedings were had and testimony taken:

EXCEPTION No. I.

Before submitting any plea or taking any other action in this cause, the defendants Robert K. Mookini and Lee Sau Chong, by their counsel, demurred to the indictment returned against them in the above-entitled cause, the demurrer of defendant Lee Sau Chong being on the following grounds, to-wit:

"1. That it affirmatively appears from the allegations thereof that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim." [198]

"2. That it is now impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to

be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"3. That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

"4. That facts are not stated in this Count of said Indictment showing the actual doing of acts or happening of facts showing the commission of a crime by this defendant.

"5. That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

"6. That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count.

"7. That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did

jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

"8. That there is a misjoinder of defendants.

"9. That it affirmatively appears from said indictment that there is an attempt to force persons to trial jointly to their prejudice without the pleading or showing of facts justifying any such joint charge or trial.

"10. That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

"11. That said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill. [199]

"12. That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear

therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

"13. That said Count of said Indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place for delivery.

"14. That it does not appear from the allegations of said Count that this defendant was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it affirmatively appearing that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be proper delivery, said Count failing to indicate that such proper delivery was not made.

"15. That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

"16. That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code. (Section 35, C. C.).

"17. That said Count of said Indictment fails completely to state facts from which this

defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

"Defendant demurs to Count Two of said Indictment on the ground:

"1. That it affirmatively appears from the allegations thereof that the charges therein made are unconsistent and repugnant with themselves, it being therein simultaneously charged that said defendant, together with three other persons, did make and as well that said defendant, together with three others, did cause to be made and presented for approval and payment the fraudulent claim. [200]

"2. That it is impossible to ascertain from said Count of said Indictment how or in what manner the defendant Lee Sau Chong participated in a joint making or causing to be made, or either, of the fraudulent claims, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"3. That it is impossible to ascertain from the allegations of this Count how or in what manner this defendant, Lee Sau Chong, is charged with having committed a crime.

"4. That facts are not stated in this Count of said Indictment showing the actual doing of acts or happening of facts showing the commission of a crime by this defendant.

"5. That it does not appear from the allegations of said Count that the Camp Director to whom it is alleged that said claim was presented for approval and payment was authorized by law to make payment or to approve the making of payment.

"6. That it affirmatively appears from the allegations of said Count of said Indictment that while attempting to allege the commission of a conspiracy, said Count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime and fails to show that participation in fact in the crime attempted to be charged in said Count.

"7. That it affirmatively appears from said Count that it is not reasonably possible that all four of such persons could have or did jointly participate in the commission of an act constituting a crime, much less the crime charged in said Count.

"8. That there is a misjoinder of defendants.

"9. That it affirmatively appears from said indictment that there is an attempt to force persons to trial jointly to their prejudice without the pleading or showing of facts justifying any such joint charge or trial.

"10. That said Count of said Indictment is indefinite and uncertain and impossible for the defendant to plead to in that it fails to

get any statement of facts showing how or in what manner this offense has participated in the presentment of the alleged false bill therein set forth.

"11. That said Count is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the presentment of said bill. [201]

"12. That said Count of said Indictment is indefinite and uncertain in that it fails to show how or in what manner said bill was fraudulent or fictitious and it fails to appear whether it is charged that the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as records of charges which could not be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed as in said Indictment set forth.

"13. That said Count of said Indictment while charging that said goods were not delivered to the Civilian Conservation Camp at all, fails wholly and completely to show that any fraud was thereby perpetrated or that said bill was not a proper bill for presentment in that it fails to appear from said Count that said goods were not delivered to some other proper and suitable place for delivery.

"14. That it does not appear from the allegations of said Count that this defendant

was bound to deliver said goods to the Civilian Conservation Camp in order to become entitled to receive payment therefor, it appearing affirmatively that delivery at any suitable place to any person authorized to accept delivery on behalf of the United States Government would be a proper delivery, said Count failing to indicate that such proper delivery was not made.

"15. That the allegations of said Count fail to state facts showing the commission of a crime by this defendant.

"16. That the allegations of said Count fail to show violation of the provisions of Section 80, Title 18, United States Code (Section 35, C. C.).

"17. That said Count of said Indictment fails completely to state facts from which this defendant can possibly know the exact nature of the crime charged against him or can possibly prepare for trial in defense thereof.

"Defendant demurs to said indictment on the further ground that in the two Counts thereof there are charged two totally separate and distinct crimes in no wise connected the one with the other.

"Defendant demurs on the further ground that there is a misjoinder of causes of action."

And the demurrer of Robert K. Mookini, defendant, being on the following grounds, to wit:

[202]

"1. That it affirmatively appears from the allegations contained in count I of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as defendants, did 'make and cause to be made' and 'present and cause to be presented' for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior.

"2. That it is impossible to ascertain from the first count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious and fraudulent claim and voucher, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"3. That it is impossible to ascertain from the allegations of said first count of said indictment how or in what manner this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

"4. That it does not appear from the allegations of said first count of said indictment that the camp director of the Schofield Camp of

the Civiljan Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment, was authorized by law to make payment or to approve the making of payment of said claim and voucher.

"5. That it affirmatively appears from the allegations of said first count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

"6. That there is a misjoinder of defendants in the first count of said indictment.

"7. That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice without pleading or showing facts justifying such joint charge or trial. [203]

"8. That said first count of said indictment is indefinite and uncertain and impossible for this defendant to plead to, in that it fails to give any statement or facts showing how or in what manner this defendant participated in making and presenting the alleged claim and voucher therein mentioned.

"9. That said first count of said indictment is indefinite and uncertain in that it fails to

show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher.

"10. That said first count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could properly be made, or as charges which could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

"11. That said first count of said indictment, while charging that said goods 'were not delivered to said Civilian Conservation Camp at all', fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

"12. That it does not appear from said first count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

"13. That said first count of said indictment fails completely and wholly to show facts upon which this defendant can possibly know the

exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof.

"14. That it affirmatively appears from the allegations contained in count II of said indictment that the charges therein made are inconsistent and repugnant with themselves, it being therein simultaneously charged that this defendant, together with three other persons named in said count as defendants, did 'make and cause to be made' and 'present and cause to be presented' for approval and payment a false, fictitious and fraudulent claim and voucher to the Camp Director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior. [204]

"15. That it is impossible to ascertain from the second count of said indictment how or in what manner this defendant participated in a joint making and causing to be made, or either, of a false, fictitious and fraudulent claim and voucher, no facts being therein stated from which this defendant can possibly know the nature of any facts by reason of which it is charged that he acted in a manner contrary to law.

"16. That it is impossible to ascertain from the allegations of said second count of said indictment how or in what manner this defendant is charged with having committed a crime; no facts being stated showing the actual doing of any wrongful act by this defendant.

"17. That it does not appear from the allegations of said second count of said indictment that the camp director of the Schofield Camp of the Civilian Conservation Corps, United States Department of Interior, to whom it is alleged a certain claim and voucher was presented for approval and payment, was authorized by law to make payment or to approve the making of payment of said claim and voucher.

"18. That it affirmatively appears from the allegations of said second count of said indictment that while attempting to allege the commission of a conspiracy, said count fails completely to state facts showing a joint participation of the defendants therein named in the commission of a single act constituting a crime, and fails to show any participation by this defendant in the crime attempted to be charged in said count.

"19. That there is a misjoinder of defendants in the second count of said indictment.

"20. That there is an attempt on the part of the United States Government to force persons to trial jointly to their prejudice without pleading or showing facts justifying such joint charge or trial.

"21. That said second count of the said indictment *in* indefinite and uncertain and impossible for this defendant to plead to, in that it fails to give any statement or facts showing how or in what manner this defendant partici-

pated in making and presenting the alleged claim and voucher therein mentioned.

"22. That said second count of said indictment is indefinite and uncertain in that it fails to show how or in what manner the United States Government has been defrauded, if at all, by the alleged making and presentment of said claim and voucher. [205]

"23. That said second count is indefinite and uncertain in that it fails to show how or in what manner said claim and voucher was false, fictitious and fraudulent, and fails to show whether the items therein set forth were so set forth as inaccurate or incorrect records of charges which might or could be made at all, it failing to appear therefrom whether or not any other goods or merchandise of a like value was delivered and billed.

"24. That said second count of said indictment, while charging that said goods 'were not delivered to said Civilian Conservation Camp at all,' fails wholly and completely to show any fraud was thereby perpetrated or that said claim and voucher was not a proper bill and voucher for presentment and payment, in that it fails to appear from said count that said goods and merchandise were not delivered to some other proper and suitable place.

"25. That it does not appear from said second count of said indictment that this defendant has violated any of the provisions of Section 80, Title 18, United States Code.

"26. That said second count of said indictment fails completely and wholly to show facts upon which this defendant can possibly know the exact nature of the crime attempted to be charged against him, or can possibly prepare for trial to defense thereof."

which demurrers and each part thereof were overruled by the court, to which ruling of the court the defendants then and there duly excepted. (Tr. Page 6.)

EXCEPTION NO. II.

That thereafter and on, to-wit: the 22nd day of April, 1935, upon the further hearing of said cause, the defendant, Lee Sau Chong by his counsel, moved that his cause as defendant in the above-entitled matter be severed for the purpose of trial, upon the grounds that each of the defendants above-named were at the time of the happening of the events referred to in said indictment Government officials in the employ of the United States Government; that said Lee Sau Chong was never in the employ of said Government, and that evidence would be admissible as to said other defendants, as such Government officials, which would not be admissible as to said Lee Sau Chong, all to the prejudice of the rights of said Lee Sau Chong. [206]

Upon consideration of said motion by the court, the same was overruled, to which ruling the said Lee Sau Chong then and there duly excepted. (Tr. Page 29.).

EXCEPTION NO. III.

That thereafter and on, to-wit: the 13th day of May, 1935, the above-entitled cause came on duly for trial before the Honorable Seba C. Huber, one of the Judges of the above-entitled court, when a jury was empanelled and sworn, and the plaintiff being represented by its said counsel and the defendants being present in court and represented by their said counsel, upon cross-examination of William E. Miles, one of the above-named defendants, and who was not then upon trial, being called as a witness for the prosecution, counsel for defendants Mookini and Lee Chong offered to prove by said Witness Miles that said Miles had converted to his own use $240.00 belonging to the Civilian Conservation Corps camp fund at Schofield Barracks; that defendant Mookini learned of such conversion of said money; that said Miles thereupon sought to and did actually borrow $200.00 from defendant Lee Chong, which said money said Miles repaid to said fund and that as a consequence of such discovery by said Mookini of such conversion by said witness Miles, said Miles placed charges against said Mookini resulting in the dismissal of the latter from the Government service, which action on the part of said Miles showed a distinct reason for animus on the part of said Miles with respect to said Mookini; that said proof indicated the position of said Miles with respect to the transactions involved in the charges before the court and showed the reason that said Miles made charges against said Mookini,

and further that said offer of proof affected the credibility of said witness Miles and showed his interest and bias with respect to defendants Mookini and Lee Sau Chong. [207]

Upon consideration of said offer of proof, the court denied the same, whereupon defendants Mookini and Lee Sau Chong duly excepted. (Tr. Pages 118 to 122.)

EXCEPTION NO. IV.

That during the cross-examination of said witness Miles, and after said witness had testified that he had borrowed $200.00 from defendant Lee Sau Chong and given said Lee Sau Chong his promissory note therefor, counsel for defendants Mookini and Lee Sau Chong requested the court that it allow counsel to indicate by said witness the circumstances under which note was made, and thereupon offered to prove said circumstances by said witness Miles, whereupon the court refused to permit such proof, to which refusal the defendants then and there duly excepted. (Tr. Page 142.)

EXCEPTION NO. V.

That upon the direct examination of John E. Cunningham, one of the defendants above-named and who was not then and there on trial, but called as a witness for the prosecution, said Cunningham testified as to conversation had between himself and Lee Sau Chong about defendant Robert K. Mookini, which conversation was not in said Mookini's presence, the testimony being as follows:

"Q. What was the conversation to the best of your recollection?

"A. Lee Chong told me that Mookini wanted his home account added in to the C.C.C. account. I told him, 'I don't like the idea; you fooling around with Federal people and you've got to explain that one of these days'. 'Well,' he told me, 'You fix it up'; I says, 'No, you better wait a couple of days when I and him will come down here and you hand him the bill.' [208]

"Q. Did you and Mookini come down a couple of days later?

"A. Yes, we did come down there and Lee Chong handed him the bill.

"Q. Handed him what bill?

"A. His present bill for his home, around $34.00 and some off cents; and he said 'Will you and Jack fix that up?' I says, 'I'm not fixing nothing up'. So he says t'me, 'The're a lot of cooks looking for work and there are a lot of cooks willing to do as they are told; that's all I have to say; you meet me at the capital building'.

"Q. What did Mookini do then?

"A. He went up to the Capital Building there and I had to meet him afterwards.

"Q. After he left, did you have any further conversation with Lee Chong?

"A. Yes, sir.

"Q. What was that?

"A. I told Lee, 'This looks kind of funny——'

"Mr. ULRICH: If your Honor please, of course this has nothing to do with either of the charges in this case; I really don't mind it going to the jury but at this time for the purpose of a ruling, I move to strike out all of the witness' testimony as to this conversation. I object to the present question on the ground that it deals with matter not involved in the present issues, that it is merely an attempt to bring into the record something which did not even—it was not even suggested that it had reached a point of any crime; and I'll take the court's ruling.

"The COURT: The motion to strike is denied."

After consideration, the court overruled the said motion to strike to which ruling counsel for defendants duly excepted. (Tr. Page 152.)

EXCEPTION NO. VI.

That during the further examination of said witness Cunningham, said witness was permitted over the objection of counsel for the defendants, to testify that on or about June 4, 1934, the following conversation was had between the witness and said Robert K. Mookini:

"Mr. MOORE: Q. The next month's bill, did you have any conversation with Lee Chong or Mookini with reference to that? [209]

"A. Along about in May—in June, around the 4th of June, Mookini said to me: 'Did you

fix up my bill with Lee Chong?' I says, 'No.' 'Well', he says, 'You better if you know what's good for you.' So Lee fixed it up again and I signed it.

"Q. Do you know how much that bill was that was fixed up?

"A. Something around $72.00 I believe.

"Mr. ULRICH: Same objection. If your honor please; the question calling for matter having nothing to do with the indictment, endeavoring to prove a separate offense not charged in the indictment."

After consideration the court held that the evidence was admissible, overruled defendant's objection thereto, to which ruling said defendants then and there duly excepted. (Tr. Page 153.)

EXCEPTION NO. VII.

That during the further direct examination of said witness Cunningham, said witness was further permitted, over the objection of counsel for the defendants, to testify as follows:

"Q. Was there any other voucher besides this one for $34. and some off cents and the one for around $72.00?

"A. There was another one, then, for June; we ran that up, I believe, to——

"Mr. ULRICH: I object to that; we have another crime every day.

"The COURT: Same ruling.

"A. About $102.00 or $103.00, that voucher went up.

"Q. Did you have any conversation during this period with Mookini concerning this covering up?

"A. Yes sir, he asked me about that last voucher. He asked me about each one there; on the last voucher, he asked me, 'Did you fix that voucher up?' I says, 'No.' 'Well', he says, 'you better. You better get ready to go to town.' So that's how I came with him that day and we had it fixed up; and I said, 'That's the last voucher I'm fixing up.'

"Q. That is the $102.00 or $103.00?

"A. $102.00 or $103.00; I told him, 'I'm not fixing no more vouchers up.' [210]

"Q. After that was there any other vouchers that he asked you to fix up?

"Mr. ULRICH: Same objection.

"The COURT: Same ruling."

Whereupon exception to the admissibility of said testimony was duly taken by the defendants. (Tr. Page 154.)

EXCEPTION No. VIII.

That on the cross examination of witness John E. Cunningham, counsel for defendants offered to prove by said witness that said witness, about April or May, 1933, shot and killed a man; that said killing was inquired into by the Territorial Grand Jury

which did not return a true bill against said witness, which offer of proof the court refused and thereupon counsel for defendants then and there duly excepted, on the ground that said evidence would affect the credibility of said witness. (Tr. Page 164.)

EXCEPTION NO. IX.

That on the direct examination of Joseph I. Deville (referred to as Charles I. Deville in the Transcript), witness called for the prosecution, said witness was permitted to testify as to statements made and conversations had between witness and Lee Sau Chong with reference to certain alleged fictitious items listed on said vouchers known as United States Exhibits "D", "G" and "J", to which these defendants objected on the ground that such statements and conversations did not amount to confession of guilt and that they could not be received in evidence as admissions against interest and further that said witness could only testify as to such statements or conversations by way of rebuttal in impeachment of defendants. [211]

Upon consideration, the court overruled defendants' objection, to which ruling of the court defendants then and there duly excepted. (Tr. Page 259.)

EXCEPTION NO. X.

That at the close of the testimony for the prosecution and after the plaintiff had rested its case, defendants moved the court that it do enter an order

directing a verdict of "not guilty"; which motion the court thereupon, after consideration, overruled, to which action of the court in overruling said motion the defendants then and there duly excepted. (Tr. Page 278.)

EXCEPTION NO. XI.

That during said trial and upon the cross-examination of defendant Robert K. Mookini and over the objection of his counsel, the court permitted the plaintiff to examine said witness on a portion only of the testimony given by said witness before the Grand Jury which returned the indictment herein against said defendant Mookini, whereupon exception was duly taken to the ruling of the court in permitting such examination. (Tr. Page 484.)

EXCEPTION NO. XII.

That on said trial plaintiff produced and offered in evidence a transcript of the notes of testimony given by defendant Mookini before the Grand Jury which returned the indictment herein against said Mookini, to the introduction of which in evidence the defendant Mookini, by his counsel, objected on the ground that the plaintiff cannot properly contradict the witness by evidence theretofore taken from that witness in a prior proceeding except as to the extent that such testimony indicated prior contradictory statements; that such evidence could not be received as an admission against interest and that such evidence [212] given before said Grand Jury was not a confession of guilt.

The court, after consideration, overruled said objection and admitted in evidence said transcript of said testimony, to which action of the court the defendant Mookini then and there excepted. (Tr. Page 587.)

EXCEPTION NO. XIII.

That in the course of said trial and after both the plaintiff and defendant had rested and before the jury had retired from the bar to consider of its verdict, the plaintiff requested the court to give to the jury each of the following instructions, to-wit:

"Instruction No. 4.

"You are instructed that the Camp Director of the Civilian Conservation Corps is an officer in the civil service of the United States. You are further instructed that it appears from the evidence in this case that said Camp Director was charged with the duty of disbursing what is known as the mess fund, and there is further evidence that he also handled a canteen fund, the mess fund being a Government realization while the canteen fund belonged wholly to the members of the Civilian Conservation Corps, and said canteen fund was not a fund belonging to the Government of the United States."

"Instruction No. 5.

"You are instructed that the word 'fraud' means the intentional employment of any cunning, deception or artifice used to circumvent, cheat or deceive another."

"Instruction No. 9.

"You are instructed that in every crime, as in this case, there must be an intent on the part of the defendants to commit the crime; and if you are not satisfied beyond all reasonable doubt that the defendants had the intent to commit the crime alleged in the indictment, then your verdict must be not guilty; in this connection, however, you are instructed that, under the law, a person is always presumed to intend the natural and probable consequences of his acts."

"Instruction No. 10.

"A reasonable doubt is not a fanciful doubt, but such a doubt raised by the evidence as a reasonable man can give a reason for. The law does not require that the government shall prove an accused guilty beyond all possible doubt, but the law does require the government shall prove each and every one of the material allegations of the indictment to your satisfaction and beyond all doubt that is reasonable, in other words, it must satisfy you as reasonable men of the guilt of the accused and satisfy you beyond a reasonable doubt. [213]

"You are the exclusive judges of the credibility of the witnesses and of the weight to be attached to their testimony, but the law you must take from the Court whether or not you, in your own minds, believe the Court to be

correct. To pass upon the law is the exclusive province of the Court, but to pass upon the facts and apply to such facts the law as given by the Court is the exclusive province of the jury, and in this connection I instruct you that, although the Judge legally may comment upon the facts and give his opinion, nevertheless that is the opinion of the Judge only and the final responsibility of deciding the facts rests with you.

"In determining the credibility of a witness you may take into consideration his interest, bias, prejudice, motives or feelings of revenge, if any, his manner of testifying, his demeanor on the witness stand and the probability or improbability of the story told by him, or any other thing which a reasonable man would consider in determining whether or not he believed a witness. If you believe that any witness has wilfully testified falsely or wilfully misled you as to any material fact in the case, you may disregard his entire testimony except such part as may be corroborated by other credible evidence, or believed by you to be true."

"Instruction No. 14.

"Gentlemen of the Jury, you are instructed that if you find and believe from the evidence beyond a reasonable doubt that the defendants named in this indictment, or any of them, agreed between themselves or conspired to-

gether to make, cause to be made, present or cause to be presented for approval or payment the vouchers covered by Counts I or II of the indictment, and that in pursuance thereof said vouchers, or either of them were so made, presented or caused to be presented with intent to defraud the United States Government or any department thereof, then I charge you that any act or declaration of such agreeing defendant or defendants in furtherance of said common purpose done or said by him or them in the absence of any other defendant is legal evidence in this case against each of the said agreeing defendants and may be considered by you in finding your verdict."

To the giving of said instructions, and each of them, the defendants objected, which objections the court overruled and gave said instructions to the jury, to which action of the court in giving each of said instructions the defendants then and there duly excepted. (Tr. Page 672.)

EXCEPTION NO. XIV.

That on said trial and after the plaintiff and defendants had rested their respective cases and before said jury had retired from the bar of the court to consider of its verdict, the [214] defendants requested the court to give to the jury each of the following instructions, to-wit:

"Instruction No. 4.

"You, gentlemen of the jury, are the sole and exclusive judges of the sufficiency of the evidence and of the credibility of the witnesses in this case, and in passing upon the credibility of such witnesses you have a right, and it is your duty, to take into consideration their prejudices, motives, feelings of revenge, the inducements held out to them to testify, or any other influences surrounding them which may have operated to induce them to testify in a particular way, if any such have been shown by the evidence in this case."

"Instruction No. 9.

"If you believe from the evidence that the certain items appearing in Counts I and II of said indictment herein were not actually delivered to said Civilian Conservation Camp, but do believe that other articles of equal value were delivered to said camp by said Lee Chong Company, then it is your duty to find the defendants not guilty."

"Instruction No. 13.

"I further instruct you that the purpose of the statute or law under which these defendants have been indicted and prosecuted is to prohibit and punish the drawing of money from the Treasury of the United States without having rendered legal and authorized equivalents therefor."

"Instruction No. 14.

"And I further instruct you that if you believe from the evidence that Defendant Mookini had no knowledge of the changes or alterations which were made in the Mother's Day bill until on or about September 13, 1934, and had no knowledge with respect to the changes or alterations which were made in the Labor Day bill until on or about October 5, 1934, then you will find this defendant not guilty."

which instructions the court refused to give, to which refusal of the court to give said instructions, the defendants at the time duly excepted. (Tr. Page 672.)

EXCEPTION NO. XV.

That on, to-wit: the 28th day of May, 1935, the said jury, sworn and empanelled in said cause, as to defendant Robert K. Mookini, returned a verdict of guilty as to Count One of said indictment returned against him in said cause, and as to defendant Lee Sau Chong, returned a verdict of guilty as to both Counts in [215] said indictment set forth, to which verdict the defendants did then and there duly except on the ground that said verdict was contrary to the law and the evidence and the weight of the evidence. (Tr. Page No. .....):

EXCEPTION NO. XVI.

That after said jury had returned its verdict, thereupon the defendants Robert K. Mookini and

Lee Sau Chong, by their said counsel, moved the court for a new trial on the following reasons filed in writing with said motion, to-wit:

"That defendant has suffered serious prejudice herein in the action of this Court in overruling defendant's demurrer to the indictment, wherein, among other things, it was claimed that it was impossible for said defendant to ascertain from said indictment in what manner it was claimed that he, together with three other defendants, had jointly participated in the making and presentment of fraudulent claims for payment, wherefore it was impossible for said defendant to properly prepare for trial.

"That this defendant suffered prejudice in that he was forced to trial without opportunity being given to acquire information vital to the preparation for trial as indicated in those paragraphs of the demurrer to the indictment herein showing how and in what respect said indictment was indefinite and uncertain and how and in what respects it was impossible to obtain information therefrom as to the nature of the crime charged against this defendant.

"That this defendant has suffered prejudice justifying and requiring that the verdict heretofore entered herein be vacated and set aside in that and because said verdict is wholly and completely unsupported by any evidence showing criminal intent on the part of this defendant."

"That the verdict of guilty against this defendant is directly contrary to the evidence in the case.

"That the verdict of guilty against this defendant is contrary to the law.

"That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes.

"That prejudice has been suffered and a new trial should be granted by reason of errors committed by the Judge on the trial of said cause in the reception of evidence offered by the United States and objected to by counsel for this defendant.

"That error was committed in the reception of evidence in this case of the testimony given by this defendant before the Grand Jury of the Territory of Hawaii, which transcript was received without any restriction upon its scope as evidence and as evidence against this defendant. [216]

"That error was committed by the Court in refusing to permit defendant to introduce evidence indicating the true relation of the Government's witness Miles to this defendant and to the other defendant in this case on the ground that to do so would be to permit a showing to be made of a commission of a crime by the said Miles, although said witness Miles

was not required to and did not claim any constitutional privilege against self-incrimination.

"That prejudice has been suffered by reason of the error committed by this court in refusing to give defendant's requested instructions Nos. Four, Nine, Thirteen and Fourteen.

"That prejudice has been suffered by reason of the error committed in giving over defendant's objections Government's Instructions Nos. Two, Four, Five, Nine, Ten and Fourteen.

"That prejudice has been suffered and the verdict herein should be set aside and a new trial granted by reason of the fact that after the taking of evidence in said cause had been closed and said case, after full argument and instructions to the jury, had finally been submitted to the jury for its deliberation and determination, without the knowledge of or notice to this defendant or his counsel, or anyone representing him, the Honorable S. C. Huber, presiding judge in said cause, in answer to an inquiry sent in from said jury, did make and send a certain statement of fact to said jury as to the number of men enrolled at the C. C. C. Camp, which fact as so stated did not appear in the evidence in the case and was based upon information acquired by said Judge entirely outside of the record of said case, which statement was in fact in conflict with evidence in the case, and which statement of fact made by said Judge to the jury without the knowledge

or approval of defendant as aforesaid, was considered by said jury and operated in the deliberations of said jury and in its effect toward inducing the verdict thereafter rendered against this defendant, to defendant's most serious prejudice.

"That prejudice was suffered by this defendant and error committed in the refusal of the Court to allow defendant's offer to prove with respect to the defendant and Government's witness, Cunningham, that said Cunningham had deliberately and wilfully shot and killed a defenseless, crippled, old man at Kailua on the Island of Oahu at a time shortly prior to the time that he took employment with the C. C. C. Camp at Schofield Barracks, Oahu.

"This defendant bases this, his motion for new trial further upon errors committed by this Honorable Court on said trial which may not now be specifically referred to by reason of the fact that the transcript of the proceedings had and evidence taken on said trial is not yet available and cannot be referred to, but by reference makes all acts and rulings of the Court heretofore excepted to on behalf of this defendant grounds for this motion for new trial."

In addition to basing his motion for new trial upon the foregoing grounds, upon which the motion of Robert K. Mookini for new trial was based, defendant Lee Sau Chong included the following grounds in his motion for new trial: [217]

"That defendant has suffered serious prejudice herein in the overruling and denial of his motion heretofore made herein for a severance and a trial separate from the other defendants in said cause and in being forced and compelled against his will and wish to stand trial herein together with one of the other defendants in said cause, to-wit: Robert K. Mookini.

"That this defendant has suffered prejudice and the verdict of guilty should be set aside and a new trial granted because under one indictment said defendant has been tried for two totally separate and distinct crimes and by said verdict has been found guilty of two crimes as the result of a single trial.

"That prejudice has been suffered and a new trial should be granted by reason of the denial by this Court of this defendant's Motion for Bill of Particulars, and in that defendant was forced to trial in the above-entitled cause without the information sought in said Bill of Particulars to his said defendant's prejudice."

But the court refused to grant said motion and gave judgment upon the verdict as rendered by the jury and did then and there impose sentence upon said defendants, to which ruling of the court in refusing to grant said motion, the defendants then and there duly excepted. (Tr. Page .....)

All pleadings and exhibits in said cause, the clerk's minutes, verdict, judgment and sentence, the reporter's transcript of testimony, and all proceed-

ings in said cause, are hereby referred to and made a part of this Bill of Exceptions.

WHEREFORE, said defendants, Robert K. Mookini and Lee Sau Chong, present this, their joint and several Bill of Exceptions and ask that the same be settled and allowed as true and correct.

Dated at Honolulu, Hawaii, September 27, 1935.

ROBERT K. MOOKINI and
LEE SAU CHONG,
By BARRY S. ULRICH (s) E. M.
By (s) EARL R. McGHEE
Attorneys for Defendants-
Appellants [218]

The foregoing Bill of Exceptions, having been examined and found to be conformable to the truth, is hereby settled and allowed, this 27th day of September, 1935.

(s) S. C. HUBER
Judge, United States District
Court for the District and
Territory of Hawaii. [219]

[Title of Court and Cause.]

WITHDRAWAL OF COUNSEL.

Filed Feb. 5, 1936 at 3 o'clock and ..... minutes p.m. (s) Wm. F. Thompson, Jr., Clerk.

BARRY S. ULRICH and
EARL R. McGHEE
Dillingham Building,
Honolulu, T. H.
Attorneys for Appellants. [220]

Comes now EARL R. McGHEE, one of the counsel of record for ROBERT K. MOOKINI, one of the Defendants above named, and hereby withdraws as counsel for said Defendant.

Dated at Honolulu, T. H., this the 3rd day of February, 1936.

(s) EARL R. McGHEE

The foregoing withdrawal of counsel is hereby noted, and ordered filed with the records in the above entitled case.

(s) S. C. HUBER
Judge, United States District Court for the District and Territory of Hawaii. [221]

[Title of Court and Cause.]

ORDER ALLOWING WITHDRAWAL OF ORIGINAL EXHIBITS.

For good cause shown, the Clerk of the United States District Court for the Territory of Hawaii is hereby authorized and ordered to docket and file with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, after briefs of the plaintiff and defendants on appeal herein have been filed in said court, original United States Exhibits "A" and "L" and original exhibits Nos. 3 and 6 for the defendants, entered and received as evidence in the

trial of the above entitled cause, upon the condition that they be returned to the said Clerk of the United States District Court upon the final termination of the appeal herein.

Dated: Honolulu, T. H., this 25th day of March, A. D. 1936.

(s) S. C. HUBER
Judge, United States District Court, Territory of Hawaii.

[222-223-224]

[Title of Court and Cause.]

TRANSCRIPT.

The above entitled matter came duly on for hearing on demurrers, before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 9:30 a. m. on Wednesday, April 3rd, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants Robert K. Mookini and Lee Sau Chong being present with their attorneys Earl R. McGhee, Esq., and Barry S. Ulrich, Esq., respectively; the defendant William E. Miles appearing with his attorney Fred Patterson, Esq., whereupon, the following proceedings were had:

The COURT: If agreeable to counsel, the Court would suggest that one of counsel for defendants open the argument, then let Mr. Moore reply, and then the other attorney close. [231]

Mr. PATTERSON: I think that would be satisfactory, Your Honor; I'll let Mr. McGhee handle the opening.

Mr. McGHEE: The defendant Mookini, Your Honor, has filed a demurrer, in which he has raised 13 distinct grounds on which he claims this indictment against him to be defective. The first count —Your Honor has a copy of the demurrer before him?

Mr. McGHEE: The first count says: (reading first count). It is the contention of this defendant that any count charging a person with having committed four separate and distinct acts inconsistent and repugnant with themselves or with each other is bad for duplicity. * * * It is the contention, however, of the defendant, that it is impossible for four men, acting jointly, to make, cause to be made, present and cause to be presented a false claim and voucher, impossible for four men to do those four acts either simultaneously or one after another * * * (argument continued).

Mr. MOORE: May it please the Court, this indictment is based upon Section 80, Title 18, of the United States Code, the first paragraph of which reads as follows: (reads) * * * Now, this indictment, in starting out, sets forth that these four defendants "did make and cause to be made, present and cause to be presented"—identical words of the statute are alleged in the conjunctive and not the disjunctive, which is the manner and form in which

Federal indictments have been presented from time immemorial. Then we have, what department of the Government were they presented to? (argument continued) * * * [232] We are here as an integral part of the United States of America, of which the Territory of Hawaii is a part; and when they endeavor to even infer that we are referring to a war department of the Territory of Hawaii, seems to me it's going right into the ridiculous and reaching for something based wholly upon imagination and not upon any logical reasoning or deduction. We submit that both demurrers, may it please the Court, should be overruled.

Mr. PATTERSON: I'll take only a few minutes, Your Honor. There are two serious things wrong with this indictment. I want to be fair with the Court. (argument) * * *

The COURT: Mr. PATTERSON, does the Court get you right in the thought that this indictment may be good as to Lee Sau Chong but not good as to the other defendants?

Mr. PATTERSON: The only possible way that this indictment can be good as to Lee Sau Chong is to say that on account of this being Lee Chong Company, that leaving the word "Sau" out of it, that he's part of it, but it doesn't say that he's part of Lee Chong Company * * * I don't see how Your Honor can go outside of the record and say that Lee Sau Chong is Lee Chong Company * * * If you take this properly, the Lee Sau Chong Com-

pany did something wrong, and they say these men knowingly presented this claim, when it's not mentioned in the indictment at all.

The COURT: As the Court reads the indictment, there is no offense charged against the Lee Chong Company as such, and it is not a party to this action.

When this demurrer was filed, the Court carefully examined the case of United States against Lono McCallum, [233] one of the last cases brought under this same Section in this court, a case in which a demurrer was interposed on much the same grounds, and the demurrer overruled. The Court also examined the case which has been referred to by counsel for both sides, the Bridgeman case; because the Bridgeman case is one in which the opinion is given by the Ninth Circuit Court of Appeals. In that case the Court uses this language:

> "It is a sufficient answer to the suggestion that there is no direct allegation of an intent to defraud the government to say that a willful attempt on the part of any person to obtain money from the government, based upon a false, fictitious, and fraudulent claim, the false and fraudulent character of which is known to him, necessarily imports an intent to defraud the government."

In the same case, in reference to the argument by Mr. McGhee as to making and causing to be

made, presenting and causing to be presented, representing four different things, the Court says:

> "It is clear, we think, that the making and presenting of a claim for money against the government are but different steps in the same act."

Then the Court states this test, which is the one that Mr. Patterson properly referred to:

> "If the facts alleged are such that, read in connection with the provisions of the statute applicable thereto, they clearly state all the essential elements of the offense, then the indictment is sufficient. When that is done the defendant [234] is necessarily apprised of what he is required to meet, and any judgment of acquittal or conviction under such an indictment will, of course, be a bar to any subsequent prosecution for the same offense."

The indictment must clearly set forth the acts which it is alleged constitute the offense.

Now, another case which the Court examined is the case of Summers against the United States, 11 Fed. 2nd 583, an opinion of the Eighth Circuit Court of Appeals. The opinion is written by my old friend Judge Watkins, who for so long represented Iowa in the United States Senate. In this case the Court says:

> "The general rule applicable to cases of this nature is thus stated in Potter against United

States: 'The offense charged is a statutory one, and, while it is doubtless true that it is not always sufficient to use simply the language of the statute in describing such an offense, yet if such language is, according to the natural import of the words, fully descriptive of the offense, then ordinarily it is sufficient.'. * * *

"There is no merit in the suggestion"——

and this covers another point——

"There is no merit in the suggestion as to the absence of the allegation that the United States marshal was clothed with the right to pay the claim, since the court must take judicial cognizance of the statute which devolves that duty on him." [235]

So in this case, the Court must take judicial notice of the authority of the two officials referred to in these two indictments as to their rights and duties under the statute. The making and presentation of the false certificate and of the false claim, whether for his own benefit or for the benefit of another, are both within the inhibitions of the statute.

It seems quite clear to the Court that, on the authority of the two cases cited, this demurrer should be overruled, and it is the judgment of the Court that it be overruled.

Mr. PATTERSON: May we have an exception, Your Honor?

Mr. McGHEE: And on behalf of Mr. Matson and defendant Mookini, I note an exception to the overruling of the demurrer.

The COURT: The exceptions will be allowed on behalf of all of these defendants. [236]

[Title of Court and Cause.]

The above entitled matter came duly on for hearing on a motion for a bill of particulars before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 10:15 a. m. on Monday, April 8th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants Robert K. Mookini and Lee Sau Chong being present, the defendant Robert K. Mookini being represented by his attorney Earl R. McGhee, and the defendant Lee Sau Chong unrepresented by counsel; defendant William E. Miles being present and represented by his counsel Fred Patterson, Esq.; whereupon, the following proceedings were had:

Mr. MOORE: In this case, may it please the Court, Mr. Earl R. McGhee appears for the defendant Robert K. Mookini, having filed a motion for a bill of particulars. There was some intimation of the filing of that motion last week when this was up for plea, and I have read the [237] motion for a bill of particulars, and I'm perfectly willing to submit it to the Court without argument.

Mr. PATTERSON: We're moving for a severance in this case, if Your Honor please. I spoke to Mr. McGhee—I hadn't spoken with him until just now—and I think he is willing to assure the Court on his investigation of it that Mr. Miles is entitled to a severance or vice versa. You have a motion for a bill of particulars?

Mr. McGHEE: Yes. If the Court please, I believe the subject is covered in the bill of particulars and pretty thoroughly argued last week on the demurrer. I am willing to submit it to the Court without any further argument unless the Court requests further argument.

The COURT: Inasmuch as a motion for a bill of particulars is directed to the sound discretion of the Court, and this is the first motion of the kind that has come before me, I would prefer that you would present your reasons.

Mr. McGHEE: Your Honor is aware that the indictment charges the defendant Mookini on two counts, with making and causing to be made, presenting and causing to be presented certain false and fictitious claims and vouchers. There are four distinct acts charged in each count, Your Honor, and it is impossible for four men to jointly make, cause to be made, present and cause to be presented one false claim and voucher. It is impossible, therefore, for this defendant to know with what act he is charged, what acts that are claimed by the United States government to constitute an offense under the section of the laws under which he is charged.

It is impossible for him to prepare for his defense—— [238]

Mr. MOORE: Let me interrupt just a minute. I want to get the plea as to Miles in this case, and then Mr. Patterson will be through, and I would suggest that the matter of the motion for severance be taken up when the various other defendants cases are at issue. What is your plea, Mr. Miles—guilty, or not guilty, to this indictment?

Mr. MILES: Not guilty.

The COURT: Let the plea of not guilty be entered as to the defendant Miles.

Mr. MOORE: May this motion that was filed for a severance on behalf of William E. Miles be taken up by this Court without prejudice because of the plea entered here today when the case is at issue as to all of the defendants.

The COURT: Yes; the Court will take it up at a time that is agreeable to you and counsel.

Mr. McGHEE: In the Shaffenburg case, with which, I believe, Your Honor is familiar, having read it last week, there is a distinction between the making and presentation of a claim, consequently it necessarily follows that there is a distinction between the making and presentation of a false and fictitious claim. This man is brought in here on a sort of a blanket charge and hasn't the least idea of what facts he may be confronted with in the matter of prosecution. If he made it, he can prepare his defense; if he is charged with having

made or caused it to be made, he can likewise prepare his defense; and likewise as to the other distinct offenses charged in count one and count two. We have no further argument, Your Honor, except that it's physically impossible for four men to make, cause to be made, present and cause to be presented a false and fictitious claim; [239] and I am willing to submit it to the Court on that as the ground alone.

Mr. MOORE: May it please the Court, the office of a bill of particulars, as I understand, is to furnish the defendant with information with which he can see what he is to meet and that he will not be taken by surprise in the case of trial. I had a number of citations with reference to a motion of this kind; a motion for a bill of particulars is one that is directed to the sound discretion of the court, and it is not the purpose of a bill of particulars to make a sort of fishing expedition out of it to find out what the Government's case is so that evidence may be produced to meet that. The purpose of a bill of particulars is where the indictment is of such an indefinite character as to not inform the defendant of the charge that is actually placed against him. * * * In almost every prosecution the facts and circumstances are given in evidence of which the charge in the indictment gives no notice. If a defendant is taken by surprise the court has ample power to protect him by granting a continuance upon a proper showing * * *. May it please the Court, in this particular case, as the records of

this Court will show, Mr. Robert Mookini, whom this indictment charges, appeared before the grand jury under a waiver of his constitutional rights; that at that meeting this case was discussed. This indictment further shows that the specific items of a certain voucher under a certain date were the ones which are claimed to be false and fraudulent; so that this defendant knows not only the particular voucher but he knows the specific items, which we contend is even one step further [240] than the Government would have to give him; and, further than that, this defendant was employed out there at the Civilian Conservation Corps, and he was for a time the man in charge of procuring food for the mess, and it is in that line of duty that it is contended by the United States Government that this fraudulent claim and voucher was presented. In other words, he is the man, you might say, right on the ground, that knows all about it; he knows what this charge is all about, he knows exactly what the items claimed to be fraudulent are; and the Government contends that his request at this time for a bill of particulars is, to say the least, nothing but a dilatory plea in the full sense of the word. This man knows exactly what he has to meet and what he's charged with, and this indictment sufficiently sets forth the charge so that either the plea of res adjudicata or autrefois acquit or autrefois convict could be successfully urged in the event that this Court either acquitted or convicted this defendant. There's no dispute, Your Honor, but what the

motion for a bill of particulars is addressed to the sound discretion of the Court, and that, except in the case of an abuse of that discretion, it is not reviewable by the appellate court. I submit the matter for Your Honor's discretion.

The COURT: In considering questions of this kind, it is exceedingly unfortunate that we do not have a more uniform criminal practice. The practice under which I served as public prosecutor for the first six years required that the names of all witnesses were to be endorsed upon the indictment, but not only that, abstract of the indictment was to be served upon the defendant at the time. That is not the Federal practice, and applies only in capital cases. [241] In capital cases it is necessary that that be done. This is not a capital case, however.

Now, the procedure of asking for a bill of particulars in a criminal case is comparable with that of a motion for a more specific statement or to make pleadings more definite and certain on the civil side; but there are certain principles that I think apply full well to both, and one which all courts recognize, that a party cannot ask to be furnished information which he himself has to the same extent as the opposite party. I did not know until the statement by the United States Attorney a moment ago that this defendant Mookini had appeared before the grand jury, which makes it seem quite probable that this indictment was returned, at least partially, on the testimony given

by him, which would show that *in least* that regard he himself was advised as to what these acts are.

Now, if this indictment in the first count did not contain the items found at the top of page two, the Court would feel that a bill of particulars setting out those items would be proper; but when it says that this account and claim was false in that it made a claim for 500 oysters $17.50, and 6 cases of apples billed, of which only two were delivered, thereby falsifying the claim to the extent of $10.20; 400 pounds of pumpkin at 4½¢ a pound, 400 pounds of fresh spinach at 4¢ a pound, 400 pounds of white squash at 5¢, a pound, 40 pounds fresh lima beans at 8¢ a pound; if this indictment did not contain those items, the Court would require the United States Attorney to set them out upon this application for a bill of particulars. But it is [242] difficult, in fact impossible, at this time for the Court to see how it could be made more specific when it says that this voucher is false, fraudulent and fictitious in that it makes claim for these items which are not correct, in one instance because a larger number are claimed to have been delivered than actually were delivered, and in another instance where none of the articles claimed were delivered.

Just what each of these four defendants had to do with this it is, of course, impossible to tell from this indictment. It may be that Lee Sau Chong first drew this bill and next Mookini O-K'd it and after he O-K'd it one of the other defendants O-K'd

it. So far as the indictment is concerned, it's quite immaterial whether one of these defendants or the other acted first; that would purely be a matter of evidence; and under the law it's just as important that the guilty be prosecuted successfully as it is that the innocent should be protected, and by that I mean that the Government is not required to disclose its evidence and thereby give the defendants undue advantages.

The matter of this indictment being duplicitous in charging four separate offenses was covered by the demurrer last week, and the Court is clearly of the opinion that it charges but one offense. As one of the cases that was relied upon in making that ruling said, that the making and presenting are but two different steps in the consummation of the same act; and whether the final proof would show the making or causing to be made, or presenting or causing to be presented, would be entirely immaterial, and the Court would be obliged to instruct the jury to that effect under [243] the law, because under the Federal statutes the causing to be made or causing to be presented is just as much a violation of Section 80 as is the making or presenting.

The Court feels that this indictment sufficiently advises the defendant of the nature of the charge made against him and from the information given in the indictment he should be able to properly prepare his defense. Therefore, the motion for a bill of particulars is denied.

Mr. MOORE: What is your plea, guilty, or not guilty?

Mr. MOOKINI: Not guilty.

The COURT: Let a plea of not guilty be entered as of this defendant.

Mr. MOORE: I suggest that this stand over until the case as to the other defendant is at issue, and that it may then be set down in 48 hours.

The COURT: Yes, the motion for severance should be disposed of before there is any attempt to set the case.

Mr. MOORE: I would suggest that this defendant Lee Sau Chong enter the plea the same as did the defendant Matson, with the same understanding.

The COURT: Yes; a plea of guilty can be withdrawn at any time; a plea of guilty doesn't prejudice the defendant's rights whatsoever.

Mr. MOORE: What is your plea, guilty, or not guilty?

Mr. LEE SAU CHONG: Not guilty.

Mr. MOORE: This defendant also pleads not guilty.

The COURT: Let a plea of not guilty be entered as to defendant Lee Sau Chong.

Mr. MOORE: Inasmuch as the defendants have all entered a [244] plea of not guilty, I suggest that it come up 9:30 Saturday morning for setting.

The COURT: In the meantime we dispose of this motion for severance?

Mr. MOORE: Yes, Your Honor.

The COURT: Will you please tell Mr. Ulrich as soon as he is able to appear here to notify the United States Attorney?

(Representative from Mr. Barry S. Ulrich's office): Yes. [245]

[Title of Court and Cause.]

The above entitled matter came duly on for hearing on a motion for a bill of particulars as to the defendant Lee Sau Chong, before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 2:40 p.m. on Wednesday, April 17th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini appearing by his counsel Earl R. McGhee; the defendant Lee Sau Chong appearing with his counsel Barry S. Ulrich, Esq.; whereupon the following proceedings were had:

Mr. MOORE: May it please the Court, after reading this motion for a bill of particulars, I believe it covers to a great extent the ground already covered, and, as *far the* United States Attorney's office is concerned, I am willing to submit the motion upon the argument heretofore presented on a similar motion in the same case.

Mr. ULRICH: If Your Honor please, not having been here [246] before, it would be impossible for me to submit the matter intelligently on the motion heretofore made. Your Honor has seen the motion?

The COURT: Yes.

Mr. ULRICH: (Argument) * * * I submit, Your Honor, that we're entitled to something further than the charges under which this indictment is presented. I submit it.

The COURT: Do you want to be heard at this time, Mr. Moore?

Mr. MOORE: Your Honor, as I stated when a motion for a bill of particulars was presented on behalf of two of these other defendants in this case, that we have set out exactly what this claim voucher is * * * (argument continued).

Mr. ULRICH: (argument) * * * May I just say this one further thing: I don't understand what harm can be done or why there should be any objection on the part of the prosecution to furnishing us with a statement of specific information to apprise us of what part we have played in the commission of a crime.

The COURT: Now, as the Court read the first count of this indictment, the offense is alleged to have taken place on the 7th day of June, 1934, and it alleges that these four defendants named did present and cause to be presented for approval and payment to the Camp Director—that would be of the "C. C. C."—"a fraudulent claim and voucher, dated May 12, 1934," in the sum of $231.00; and then it specifically sets out items amounting to $83.90 which it alleges were not delivered, in the manner in which the false claim says they were delivered; and, as the Court understands it, the Government would be limited to proof [247] as to

those items; no other items could be shown unless it was bearing solely upon the proof of these; that to sustain the allegations of the indictment the Government would have to show that all or at least a substantial portion of these items were not delivered as claimed by the vouchers presented: Now, if these several items amounting to $83.90 were not included in this indictment, the Court would feel that you were entitled to your bill of particulars without any question.

As to the second count of the indictment, certain items amounting to an aggregate of $72.50 of a total claim of $526.00 are claimed to be false and fraudulent, and they are alleged to have been presented on the 9th day of September, 1934, and, again, to the Camp Director of the C. C. C.

As referred to by Mr. Moore, Mr. Ulrich, the Circuit Court of Appeals of the Ninth Circuit, in the case of Bridgeman against United States, 140 Federal at 577, has passed upon an indictment brought under this section of the statute. And another case which the Court considered in connection with this matter is a more recent case; I believe it's from the Eighth Circuit Court of Appeals; it's the case of Summers against the United States, 11 Fed. 2nd, page 583.

I take it that the purpose of a bill of particulars is not to disclose the evidence of the Government; I think we would agree on that proposition, so no authority need be presented on that. This whole statute seems to denote intent to defraud the Gov-

ernment rather than the actual [248] defrauding, which are covered by other statutes; and on that point the Bridgeman case says it is sufficient answer to the suggestion that there is no direct allegation of intent to defraud the government to say that a wilful attempt on the part of any person to obtain money from the government based upon false, fictitious and fraudulent claims, the false and fraudulent character of which is known to him, necessarily imports an intent to defraud the Government; further, if the facts alleged are such that, read in connection with the provision of the statute applicable thereto they clearly state all the essential elements of the offense, then the indictment is sufficient; and citing certain cases in support of that proposition:

> "When this is done the defendant is necessarily apprised of what he is required to meet, and any judgment of acquittal or conviction under such an indictment will be a bar to any subsequent prosecution for the same offense."

The court then holds that the averments of an indictment, which is undoubtedly followed in framing this indictment, are sufficient.

Defendant's motion for a bill of particulars is overruled.

Mr. ULRICH: We except to the ruling of the Court.

The COURT: Let the exception be noted and allowed.

Mr. ULRICH: Now, if Your Honor please, at this time the next is a motion for severance. (Mr. Ulrich hands a document to Mr. Moore).

Mr. MOORE: This is the first time I have seen this. [249]

Mr. ULRICH: Yes, if Your Honor please, I have just finished it. I'll read it, if I may, to the Court. (Mr. Ulrich reads document)

Now, if Your Honor please, we recognize that a motion for severance is directed very largely to the discretion of the Court. We are coming before the Court at this time and seriously asking for something which we believe in fairness we should be allowed. We are showing the Court that our position is quite different from the position of the other defendants in this case . . . (argument continued).

Mr. MOORE: May it please the Court, the Court can see from the indictment itself this is a joint venture. There are four people connected with it; and with reference to a joint venture, of course, various parties to it do various things, but in a joint venture, of course, it is perfectly proper, perfectly permissible, and instructions have been given in this Court heretofore and in courts all over the country to the effect that where there is a joint venture, the acts of one are the acts of all . . . (argument continued). I have just received this motion for severance, and if the Court wishes to have some authorities or anything of that kind on it I would be glad to furnish any that the Court desires.

Mr. ULRICH: If Your Honor please, I have just been informed that there is pending before Your Honor now another motion for severance; I haven't known of that.

The COURT: Yes, that is true; there is such a motion that hasn't been submitted.

Mr. MOORE: It's something, I believe, to come up Saturday morning. [250]

Mr. ULRICH: I should imagine it would be premature to determine——

The COURT: Yes, the Court was going to announce that he would take this under advisement until the other was argued.

Mr. ULRICH: If Your Honor please, may I reply to what has been said by counsel for the Government. (argument)

The COURT: The Court quite agrees with Mr. Ulrich that the mere fact that it might require an additional trial or so is not to be considered as against the rights of any of these defendants that would be otherwise prejudiced. However, I am equally free to say that the mere fact that certain of the defendants were government officials, and you do not know, if otherwise jointly connected, shall not make any difference as far as the trial of the case is concerned, but would make considerable difference as to what punishment might be meted out in the event they were found guilty. Now, in the case of another defendant who has applied for a separate trial, he sets out that certain admissions were made by some of these defendants involving

him that were not made in his presence and hearing, and that to have those admissions go to a jury would naturally be prejudicial. That seems to be a point that's well taken. Is there any such claim in your case, Mr. Ulrich?

Mr. ULRICH: That's the fact, if Your Honor please. I must be frank to say to the Court that my knowledge of the facts of this case is probably much less complete than that of other counsel who have had the benefit of events over a period of weeks . . . (argument continued) [251]

The COURT: There's one thing impresses me favorably in regard to your defendant, Mr. Ulrich, and that is, while he protests strongly his innocence just as the others do, he does not do as they do, he does not say that while he's innocent the other fellows are guilty. As a matter of human fairness, I'd say that's in his favor. Mr. Moore, it has been definitely arranged to take the other motion up Saturday?

Mr. MOORE: Yes, Your Honor.

The COURT: Then I would suggest that we continue further hearing on this motion until that time. If you wish to make any amendment in the meantime, Mr. Ulrich, do so.

Mr. ULRICH: Thank you, Your Honor.

The COURT: And if you have any authorities you would like to have the Court consider, just hand the memorandum to me and to Mr. Moore.

(Adjourned—3:12 p. m.) [252]

[Title of Court and Cause.]

The above entitled matter came duly on for hearing on motions for severance as to the defendants Lee Sau Chong and William E. Miles, before the Honorable Seba C. Huber, one of the Judges of the above entitled Court, at 10:00 a. m. on Saturday, April 20th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini appearing by his counsel Earl R. McGhee, Esq; the defendant Lee Sau Chong appearing with his counsel Barry S. Ulrich, Esq; the defendant William E. Miles appearing by his counsel Fred Patterson, Esq.; whereupon the following proceedings were had:

Mr. ULRICH: May I make this statement to the Court, if Your Honor pleases. Prior to the filing of my motion, Mr. Fred Patterson had already filed a motion the contents of which I saw only after the last hearing in this case, in which he asked for severance from the other two defendants on the ground of prior prejudicial statements which would not be available in the event of the trial of his client [253] alone. My motion was based on another ground, seeking a severance on behalf of my client from the two other defendants Mookini and Miles, making no claim of such statements—I mean, not based on the ground of prejudicial prior statements or admissions. Apparently I am faced with this dilemma; I must either join in the allegations of the prior prejudicial statements and throw myself with Mr. Patterson, which I don't believe I could do on

the affidavit which he has furnished, or rest my motion on the ground heretofore made, claiming a divergence of interest and evidence as to the other two defendants which would not be available as against my client. After considering the matter, I have preferred to rely on my motion as originally presented. As a matter of fact, I could not make a statement of prior statements as to my client, to be perfectly frank with the Court, of the same nature as Mr. Patterson alleges with respect to his client. I don't believe there's much in this evidence to present on behalf of either defendant to throw the guilt or blame on Mr. Lee Chong, as is alleged; and for various reasons I rely upon my prior motion.

Mr. MOORE: May it please the Court, we have filed this morning objection to the motion insofar as the severance for Lee Sau Chong is concerned, because we believe, may it please the Court, that, especially as to the two defendants Robert Mookini and Lee Sau Chong, that their preparation of these various vouchers that were presented for approval and payment to the Camp Director out there, that they were so intertwined and interrelated and each having to do with practically all steps connected with them, or so nearly so [254] that it would be an absolute duplication of the evidence as to both defendants; in other words, the same identical evidence would be admissible in the one case and it would be admissible to the other in the other case in the event it was severed; so that we see with reference to these particular two defendants that their cases ought to be tried together.

Mr. PATTERSON: Which two defendants, Mr. Moore?

Mr. MOORE: That's the case of Robert Mookini and Lee Sau Chong. Of course, there has been a severance by virtue of the plea already in the case of John E. Cunningham, and that of course is not the question here before the Court this morning.

Now, with reference to the defendant Miles, there is some evidence that would be conflicting as to the second count, that is, with reference to the voucher dated September 1st, when there was quite a row out there at the Schofield camp, as I understand it, between Lee Sau Chong and William E. Miles, where there were various claims made back and forth; so that, with reference to the defendant Miles we have not filed any objection to the severance; and we submit Lee Sau Chong and Robert Mookini should be tried together.

The COURT: Mr. Patterson, do you want to be heard?

Mr. PATTERSON: Well, there's been no objection to my motion, Your Honor; I think it was well taken; I think we're all agreed that as to Mr. Miles there should be a severance as far as he is concerned.

The COURT: Mr. Miles is ready to go to trial, is he?

Mr. PATTERSON: Is that up this morning, Your Honor? [255]

The COURT: But the one thing the authorities are unanimous on is that when a defendant asks for a separate trial he should be tried first and as soon

as possible, so that his evidence would afterwards be available for his co-defendants or the Government, as the case may be.

Mr. PATTERSON: (argument).

The COURT: The Court would be very reluctant to force any two or more of these defendants to go to trial together if it was to prejudice the rights of either. It is not claimed, Mr. Ulrich, on behalf of your client, I understand, that there is any serious antagonism between your client and the co-defendants?

Mr. ULRICH: It is not claimed that there is any serious antagonism between my client and Mr. Mookini. From remarks made by Mr. Patterson and the prosecutor's office this morning, however, it appears that there may be some antagonism between my client and Mr. Miles, reference made to the controversy at the Camp; I didn't even know that there was such a controversy.

(Further argument between counsel)

The COURT: The Court at this time has no knowledge of what the evidence before the grand jury was or what the evidence that would be presented on the trial is. The affidavit filed by the United States Attorney in opposition to this motion indicates that there was no such evidence, as I understand the affidavit; am I right in that, Mr. Moore?

Mr. MOORE: You are right in this respect, that there has been no statements made which would be prejudicial to the rights of Lee Sau Chong. Any ad-

missions that have been [256] made have not been made to the effect that Lee Sau Chong had anything to do with these vouchers or that he knew that they were false and fraudulent. There have been statements made, but not regarding Lee Sau Chong in connection with that.

Mr. ULRICH: That was the reason, Your Honor, that I was unwilling to join in the ground suggested to me as to prior prejudicial statements. I have to rest my motion for complete severance entirely on what I presented to the Court before, that there should not be a severance except from Mr. Patterson on his own allegations of antagonism.

The COURT: That antagonism, as I understand it, exists only between Mookini and Miles and in no way involves Lee Sau Chong; is the Court correct in that statement?

Mr. PATTERSON: Well, I believe that Miles is antagonistic only to two of them, Your Honor; I'm satisfied that he's antagonistic to both Mr. Ulrich's client and Mr. McGhee's client, perhaps more toward Mr. McGhee's client than he is toward Mr. Ulrich's client. I wouldn't like to state definitely just what that was, but I'm satisfied from such investigation of the case as I have made that there is a conflict of interest between Miles and Mookini and Miles and Lee Sau Chong.

The COURT: Before passing upon this motion the Court would like to examine more fully the pleadings that have been filed as to these several motions. (The Court glances through a file of papers

handed him by the Clerk). The Court will take the matter under advisement and, in all probability, rule Monday afternoon. You'll be advised in the event he does, however. I'm going to keep this file, Mr. Clerk. [257]

[Title of Court and Cause.]

The above entitled matter came duly on for a ruling, by the Honorable Seba C. Huber, one of the Judges of the above entitled Court, on motions for severance, at 2:15 p. m. on Monday, April 22nd, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini appearing by his counsel Earl R. McGhee, Esq; the defendant Lee Sau Chong appearing with his counsel Barry S. Ulrich, Esq.; the defendant William E. Miles appearing by his counsel Fred Patterson, Esq.; whereupon the following proceedings were had:

The COURT: At the last hearing of this matter all of the counsel seemed to be rather agreed on the one point, that the defendant Miles should be severed from the other defendants. That, however, would not justify the Court in making such an order unless Miles' application showed in itself sufficient grounds. And the Court, after studying that application, is of the opinion that it contains two [258] grounds either of which would be sufficient to warrant a severance; and it is the order of the Court that the defendant William E. Miles' application for a separate trial be granted, and that he be tried separate and apart from the co-defendants.

Now as to the application of Lee Sau Chong. He bases his request for a severance on quite different grounds, principally that the co-defendants are or have been officers of the Government, while he is merely a civilian. As previously intimated by the Court, that does not seem to be a sufficient ground to warrant a severance. In the affidavit of Mr. Moore—upon which in cases like this the Court must largely rely, since he is in position to know not only who the witnesses are but what their evidence will be, having presented this case to the grand jury and heard the evidence that was produced before that body—in his affidavit Mr. Moore states that there are no admissions or confessions involving other defendants which would prejudice the defendant Lee Sau Chong; and he also states in his affidavit that the facts in support of the allegations of the indictment are of a joint nature and so closely interrelated that they, insofar as Lee Sau Chong is concerned, should be tried together, that is, with Mookini. Defendant Lee Sau Chong's application for a separate trial is denied.

Mr. ULRICH: We will note an exception, Your Honor.

The COURT: Let the exception be noted and granted.

Mr. MOORE: May it please the Court, Mr. Stainback is to try these cases of these three defendants, and he is [259] now engaged in a jury trial in the Circuit Court; and I would suggest, may it please the Court, that this matter stand over until Friday at two o'clock for the purpose of setting.

The COURT: That will be agreeable to the Court if it is to counsel.

Mr. ULRICH: That's agreeable.

Mr. PATTERSON: All right.

Mr. McGHEE: Yes.

The COURT: Two o'clock Friday these cases will come up for setting. [260]

[Title of Court and Cause.]

The above entitled matter came duly on for trial before the Honorable Seba C. Huber, one of the Judges of the above entitled court, at 9:00 a. m. on Monday, May 13th, 1935; the Plaintiff being represented by Assistant United States Attorney Willson C. Moore; the defendant Robert K. Mookini being present and represented by his counsel Earl R. McGhee; the defendant Lee Sau Chong being present and represented by his counsel Barry S. Ulrich; whereupon, the following proceedings were had and testimony adduced:

The COURT: Is the Government ready?

Mr. MOORE: Yes, Your Honor.

The COURT: Mr. Ulrich, are you ready?

Mr. ULRICH: Ready, Your Honor.

The COURT: Mr. McGhee?

Mr. McGHEE: Ready, Your Honor. [261]

The COURT: You will proceed to draw a jury for this case. Gentlemen, as your names are called you will take a seat in the jury box.

Mr. ULRICH: If Your Honor please, heretofore I have appeared only for the defendant Lee Sau Chong, and at this time I would like to have the record show that I appear also for the defendant Robert Mookini, and that I represent both defendants.

Mr. McGHEE: And I represent the defendant Mookini.

Mr. ULRICH: Oh yes, and Mr. McGhee is still attorney for defendant Mookini.

(After the drawing of the tentative jury panel, all prospective jurors in the courtroom were sworn).

The COURT: Gentlemen of the jury, the law endeavors to select jurors who are absolutely impartial, and in an effort to obtain such a jury at this time certain questions will be propounded to you by the Court and then by counsel for the respective parties. The questions will be addressed to you as a whole.

This case is one in which an indictment has been returned against Mookini and Lee Sau Chong, the two men at the extreme right of the trial table, between their counsel Mr. Ulrich and Mr. McGhee. They, together with another defendant not now on trial, have been charged with making, causing to be made, presenting and causing to be presented certain false vouchers to an officer of the United States.

Have any of you heard anything about this case, that is, any purported statement of fact by any interested party or one assuming to know what the facts are that could [262] by any possibility affect

your judgment in this matter? If you have heard such facts or statements, please indicate it by raising your hand. Mr. Stainback, the United States Attorney for this district, Mr. Moore, or any others of his department, Mr. Ulrich, or Mr. McGhee, any of these attorneys for any of you gentlemen in any matter that you now have pending? If any of these are your attorneys, please designate.

Mr. DAMON: Mr. Ulrich is attorney for the Bishop Trust Company in a case in which we're interested.

The COURT: Not your personal attorney?

Mr. DAMON: No sir.

The COURT: Would you feel that such employment could in any way influence you as a juror in this case?

Mr. DAMON: It would not.

The COURT: Is there any other juror who has employed or has any connection with any of the attorneys that have been mentioned by the Court?

Would the fact that one of these two defendants is a Hawaiian and the other a Chinese in any way influence the conduct of any of you jurors either favorably or unfavorably to these defendants? If so, designate that by raising your hand.

Do any of you have any business connections or association with Lee Sau Chong or the company by whom he is employed?

Do any of you know of any reason whatsoever why if accepted as jurors to try this cause you could not render a true verdict according to the law and

the evidence. If anything occurs to you that might in any way influence you either favorably or unfavorably to either of these defendants, please designate so that the matter can be properly [263] inquired into.

The COURT (continuing): In this case, gentlemen of the jury, the Court will instruct you as a matter of law that these defendants and each of them are presumed to be innocent until they are satisfactorily proven to be guilty by the evidence presented by the Government; that this evidence when presented must convince you beyond all reasonable doubt; and that you are to give to each witness and to all testimony presented the full credit that it is entitled to under the law in the manner in which you will be instructed. Are you willing to accept such law to be the law of this case and conduct yourselves as jurors accordingly? If you have any doubt about your ability to do so, please designate by raising your hands.

Mr. Moore, you may proceed to make such further examination as you care to.

Mr. MOORE: Gentlemen, this case is one that grows out of the operation of the Civilian Conservation Corps camp, or what is commonly known as the "C. C. C.", at Schofield Barracks. The indictment returned charges four defendants with the crime as His Honor has stated; those four defendants were William E. Miles, John E. Cunningham, Robert K. Mookini, and Lee Sau Chong. There is one defendant, John E. Cunningham, who has already plead guilty. There has been a severance granted in this case as to the defendant William E. Miles; and these

two defendants, that is, Lee Sau Chong and Robert Mookini, are before you on trial this morning.

Now, in the event that William E. Miles is called as a witness in this case on behalf of the Government, would [264] that prejudice you either against these defendants or for these defendants? In other words, would that make any difference to you gentlemen?

Mr. MOORE (continuing): Now, do any of you gentlemen know either Mr. Ulrich or Mr. McGhee to the extent that you visit at their homes and they visit at your homes? Mr. Jefferson, which one is it?

Mr. JEFFERSON: I know Mr. Ulrich.

Q. Do you visit at his home?

A. I have, a number of years ago.

Q. Is there anything in your acquaintance with Mr. Ulrich, Mr. Jefferson, that would embarrass you in any way in sitting in this case?

A. Not in the slightest.

Q. And you feel, Mr. Jefferson, that if the Government shows you by evidence here that convinces you beyond a reasonable doubt of the guilt of these defendants or either of them, the mere fact that you are friendly with Mr. Ulrich would make no difference whatsoever?

A. Not in the slightest.

Q. And if chosen as a juror you would do your utmost, Mr. Jefferson, to cast aside any friendship that you have for Mr. Ulrich and render a fair and just verdict in this case?

A. would.

Q. And if chosen in this case you would be fair to the Government and fair to these defendants?

A. I should, yes.

Q. Any of you other gentlemen know Mr. Ulrich or Mr. McGhee [265] to such an extent or well enough so that it would embarrass you to sit as jurors in this case and you feel you couldn't be fair?

Q. Are there any gentlemen that dislike either Mr. McGhee or Mr. Ulrich so that it might prejudice the people they represent?

Mr. MOORE (continuing): Now, gentlemen, a few months ago there were several articles in the papers that purported to give some of the facts in this case. Did any of you gentlemen read any articles about the C. C. C. Camp at Schofield? Those of you gentlemen that have read those newspaper articles purporting to show or give facts concerning them, did the reading of those articles cause you to form any opinion in this case whatsoever as to the guilt or innocence of these defendants?

Q. Now, do you gentlemen feel that you are in such a frame of mind that if you were charged as defendants in this indictment instead of those that are now before the Court, that you would feel perfectly satisfied to have 12 men in the same frame of mind that you are try you in your case?

Q. Do any of you gentlemen know of any reason whatsoever why you cannot sit here as fair and impartial jurors both for these defendants and for the Government?

Mr. MOORE: Pass the jury for cause.

Mr. ULRICH: Mr. May, I understand that you know nothing at all about this case except what you've heard here this morning?

Mr. MAY: No.

Q. You know nothing of the parties—or do you; either Mr. Mookini, sitting there, or Mr. Lee Sau Chong? [266]

A. I know of him; I know Mookini.

Q. Do you know a Mr. Miles?

A. I know of him.

Q. Do you know him personally?

A. No.

Q. If he were to testify in this—by the way, he's under indictment, he turned state's evidence, he has some sort of a deal with the Government——

Mr. MOORE: I object to that, may it please the Court, and ask that it be stricken. The man is under subpoena before this Court; any statement as to any "deals" I think is highly prejudicial and not within the issues here.

Mr. ULRICH: I withdraw the word "deal"; I think the inference is a proper inference there must be some arrangement before the man takes the stand as a witness for the Government.

Mr. MOORE: I object to that, may it please the Court, or any statement that there is any "deal" or anything like that at all with the United States Government. The man is under subpoena; if he wants to testify, he can; if he don't, he can go under his constitutional rights.

Mr. ULRICH: Change the word "deal" to "arrange" for his testimony.

Mr. MOORE: I'll submit the objection, Your Honor.

The COURT: It appears to the Court that, until there is some evidence warranting such an inference, it would be well not to comment on it.

Mr. ULRICH: Very well, Your Honor.

Q. If Mr. Miles testifies in this case, would that fact have any influence one way or another upon your weighing of his testimony?

A. No. [267]

Q. Do you know a man by the name of John Edward Cunningham?

A. Personally, no; I have seen him; I have just heard of him.

Q. He's one of the defendants in this case; if he turns state's evidence and testifies, having pleaded guilty, would you give to his testimony just that measure of credence that you felt it was entitled to under all of the circumstances?

A. I would.

Q. Do you know anything about this Conservation Camp or any of the workings of it; have you had anything to do with it at all?

A. Nothing whatsoever.

Q. Do you know a man named Matson?

A. I know him by sight.

Q. You know who he is; he was connected with the Camp. You understood from the Court's state-

ment to you that these defendants are presumed to be innocent?

A. Yes.

Q. You would give him the benefit of that presumption, would you; that is, we have you assurance that you will only find him guilty when they have been so proved?

A. Yes.

Q. And not only that, but you understand this has to be beyond any reasonable doubt?

A. Yes.

Q. We have your personal assurance that you'll give us the benefit of that doubt throughout the case?

A. Yes.

Q. Mr. Jefferson, you know nothing about the case except what you've heard here this morning?

A. No. [268]

Q. You feel that you could approach it with a perfectly clear mind and give the defendants an even break, and that all we want is a square deal, and also the Government, to give them the benefit of whatever they might be entitled to?

A. Yes.

Q. This casual acquaintance that you had with me some weeks ago is not likely to lead you to lean over in my favor or anything of that kind?

A. No.

Q. It's not going to prejudice you one way or another?

A. No.

Q. Mr. Damon, I take it you'll be perfectly fair if sworn in this case; the fact that I represent your Company in a different matter would have no effect on you whatever?

A. No.

Q. Mr. Chong, do you know Lee Sau Chong?

A. Yes, I do.

Q. That's not a family name—Chong?

A. No.

Q. The family name comes at the other end?

A. The family name is Lee Chong.

Q. Are you related to Lee Chong?

A. I think his name is Mr. Lee.

Q. You are employed by C. Q. Yee Hop?

A. Yes.

Q. You have a sort of a rival business against Mr. Lee Chong?

A. Yes.

Q. Do you feel that would influence you in any way against him?

A. No sir.

Q. You think not?

A. No. [269]

Q. The fact that you have a similar line of business would have no influence?

A. No.

Q. You don't know him personally, or do you?

A. No.

Q. Anything in the acquaintance that would prejudice you either one way or the other, for or against?

A. No.

Q. You would give him a fair trial if you're admitted as a juror?

A. Yes.

Q. You would require that he would be proven guilty to your satisfaction and upon that proof you would render a verdict of guilty?

A. Yes.

Q. You would require that they prove that a crime was knowingly committed in this case, is that right?

A. Yes.

Q. Mr. Morley, do you know these two defendants?

A. I have spoken once or twice to Mr. Lee Chong.

Q. Mr. Lee Sau Chong, I believe, is his full name. Have you sold goods to him?

A. No sir.

Q. I take it there's nothing in that contract that would prevent you from being a fair juror in this case?

A. No.

Q. And you'll be that if sworn as a juror?

A. Yes.

Q. Mr. Leithead, do you know anything about this case at all?

A. Nothing whatsoever.

Q. What is your business connection? [270]

A. I am with American Factors.

Q. Do you know either Mr. Lee Chong or Mr. Mookini?

A. I know them by sight.

Q. Do you know Mr. Miles?

A. I do.

Q. Is he a friend of yours?

A. No.

Q. What is the character of the acquaintance?

A. Oh, I have just known him about 30 years; we say "Hello" to each other.

Q. Have you visited his home?

A. No.

Q. Or he at yours?

A. No.

Q. Do you know Mr. Cunningham?

A. I have known John Cunningham for about 25 years.

Q. Did you ever visit at his home?

A. I think I did, in a business way.

Q. Have you had any business connections with him recently?

A. He came down and applied for a position.

Q. Applied for a position with you?

A. Yes.

Q. Are you seriously considering his application?

A. I told him he had better get through with this trouble before he applied for a position anywhere.

Q. Seriously, do you feel you couldn't fairly weigh any testimony he might give, by reason of the acquaintance of long standing that you've had with this man?

A. No.

Q. Your inclination would be, I take it, to help him if you could, or would it?

A. Not on the trial in this case.

Q. I mean, generally?

A. No.

Q. What about Miles; is there anything in your acquaintance of long standing with him that would make it embarrassing? [271]

A. No; I haven't seen him for months.

(Similar questions asked of Mr. Frederick Lamb, who was later excused)

Q. Mr. Moore (Robert J.), do you know anything of the people that I have been talking about here, either of the defendants or Mr. Miles or Mr. Cunningham?

Q. I know Mr. Cunningham slightly.

Q. How do you happen to know him?

A. Oh, just through some trouble he had before.

Q. You didn't have any contact with that episode, did you; I mean, there's nothing that brought you personally in contact with him in connection with that?

A. No.

Q. Do you know Mr. Miles?

A. No.

Q. Do you know of any reason why you couldn't, if sworn as a juror, give a fair verdict?

A. No.

(Similar questions asked of Mr. Peter M. Neilsen, who was later excused)

Q. Mr. Alderman (Hubert P.), do you know anything about this case?

A. No sir; I only heard it this morning.

Q. Know any of these people here at all?

A. None of them.

Q. By the way, does Mr. Moore (Willson C.) or Mr. Ingram Stainback have—have any of them acted for you as counsel or attorneys at law at any time; I think the question was asked whether you had any pending business with any one here at all; neither Mr. Moore nor Mr. Stainback have acted as your attorney?

A. No. [272]

Q. Anyone else?

A. No.

Q. And the question was asked generally of the jury by opposing counsel, are any of you so well acquainted with either Mr. Stainback or Mr. Moore that you visit socially at their homes or have visited socially, or they in yours?

A. No.

Q. I take it that you don't know of any reason why you couldn't be a perfectly fair juror?

A. No.

Q. We have your sworn statement that if sworn as a juror you will be that fair?

A. Absolutely.

Q. Mr. Neff (Walter H.), do you know anything of the case?

A. Not except what I heard this morning.

Q. Do you know Mr. Miles?

A. Yes.

Q. How well do you know Mr. Miles?

A. I have known him for a number of years, but there's nothing personal about it.

Q. What has been your contact with him?

A. I have known him in the Army.

Q. You were in the Army together?

A. Yes.

Q. Did you leave the Territory; did your unit leave the Territory?

A. No.

Q. Well, how close to him were you in the Army —over him, under him, or alongside of him?

A. Under him; he was commanding officer in my company.

Q. He was commanding officer of your company?

A. Yes.

Q. That might or might not have been over you. Do you feel that, by reason of that contact, nothing occurred which [273] left you in such a frame of mind that you would be inclined to either favor or refrain from favoring any evidence that might be given by him in this case?

A. No.

Q. You think that you could listen to his testimony and then to testimony of another witness directly contradicting everything he said and give each witness exactly the same attention and consideration so far as the various testimony is concerned?

A. Yes.

Q. Do you know Mr. Cunningham?

A. Not personally.

Q. You just know who he is?

A. I just know who he is.

Q. Never met him?

A. I have seen him at times at Leahi Home.

Q. Do you know of any reason at all—and by that I mean, do you know of any reason why it would be embarrassing for you to act as a juror?

A. No.

Q. Mr. Toomey, do you know any of these people here?

A. No.

Q. Do you know Cunningham?

A. No.

Q. Or Miles?

A. No.

Q. Do you know anything about the case at all except what you've heard here this morning?

A. No.

Q. Would the fact that an indictment has been found against the defendant, or these defendants, incline you to feel that there was any presumption of guilt or anything at all [274] that arose from that fact?

A. Innocent until they're proved guilty.

Q. Innocent until they are proved guilty, and the indictment means nothing so far as the trial in this case is concerned?

A. Yes.

Q. And if sworn as a juror in this case you'll give them the benefit of every reasonable doubt throughout the trial of this case, is that right?

A. Yes.

Q. If instructed so to do, and you'll be so instructed by the Court?

A. Yes.

Mr. ULRICH: We pass the jury for cause.

The COURT: The defendants will have 10, and the Government 6 peremptory challenges. It is the Government's first peremptory.

(Mr. Chong was excused by the Plaintiff; Frank E. Fiske drawn as a prospective juror, questioned and passed, and later excused by defendants)

(Mr. Leithead was excused by the defendants; James A. Malloy drawn as a juror, and questioned as follows)

Mr. MOORE: Mr. Malloy, you heard the questions the Court asked these other members of the jury?

A. Yes.

Q. And you heard the questions I asked?

A. Yes.

Q. If the same questions were asked you, would your answers be in substance the same?

A. Yes.

Q. You don't know of any reason why you couldn't sit as [275] a fair and impartial juror here?

A. No.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Malloy, do you know any of these people we have been talking about?

A. No.

Q. You don't know them at all?

A. No.

Q. Ever heard of Mr. Miles?

A. Yes.

Q. You had no contacts with Mr. Miles in connection with this case?

A. No.

Q. Nor with Mr. Cunningham?

A. No.

Q. Nor do you know either of the two defendants in this case?

A. No.

Q. And you could sit as a juror in a criminal case after an indictment by a grand jury, with a perfectly open mind, when you understand that only one side of the case goes to the grand jury?

A. Yes.

Q. And you would not find them guilty unless they were proven guilty by evidence adduced in the case beyond every reasonable doubt?

A. Yes.

Mr. ULRICH: Pass the juror for cause.

(Mr. Fiske being excused by defendants, Mr. Charles B. Lemon, Jr., was drawn as a prospective juror).

Mr. MOORE: Mr. Lemon, did you hear the questions asked by the Court and by myself of the members of the jury?

A. I did.

Q. And if the same questions were asked you, would your [276] answers be in substance the same?

A. About.

Q. Do you know of any reason whatsoever why you could not be a fair and impartial juror in this case?

A. I do not.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Lemon, did you say that you did not know anything about the case at all?

A. Not outside of the fact I heard of it.

Q. Outside from what you may have read in the papers, have you ever discussed the case with anyone who purported to know anything about the case himself?

A. No one at all.

Q. You do not know Mr. Miles, or do you?

A. I have known of him.

Q. In what way do you happen to know of him?

A. Well, being that he was Chairman of the Democratic Party——

Q. Are you a Democrat?

A. No.

Q. But you just heard of him in that way?

A. Yes.

Q. Do you know Mr. Cunningham?

A. I have heard of him; I think I know who he is.

Q. But you have never met the man, or have you?

A. No.

Q. You don't know of any reason why you couldn't be perfectly fair as a juror, do you?

A. No.

Mr. ULRICH: Pass the juror for cause.

(Mr. Neilsen was excused by the defendants, whereupon Mr. Archibald Mark was drawn as a prospective juror, and finally excused by the Plaintiff. Mr. Leslie Lemon [277] was next drawn as a prospective juror, and upon being questioned admitted prejudice in favor of defendant Mookini by reason of friendship; whereupon he was excused by the Court. Mr. Louis A. Soares was next drawn as a prospective juror, and questioned):

Mr. MOORE: Mr. Soares, you heard the questions that the Court asked?

A. Yes.

Q. And you heard the questions I asked?

A. Yes.

Q. If the same questions were asked you now, would your answers be in substance the same?

A. Same.

A. Do you know Mr. Miles?

A. I do.

Q. Is that acquaintance of such a nature that if he was called to testify here it would prejudice you either one way or the other?

A. It would not.

Q. Is your acquaintance with Mr. Miles of a close nature?

A. No, it's just friends.

Q. You call at his house and he at yours?

A. No.

Q. Do you know Mr. Cunningham?

A. I do.

Q. Is there anything in that acquaintance with him that would prejudice you either one way or the other in this case?

A. It would not.

Q. You visit at his house?

A. I do not.

Q. Do you know Mr. Mookini?

A. I do.

Q. You do know Mr. Mookini?

A. I do, as an official of the Democratic Party.

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Q. You do not know him in a social way at all?

A. Yes, I do.

Q. You don't visit, though?

A. Io do not.

Q. Is there anything in your acquaintanceship with Mr. Mookini that would embarrass you in any way to sit as a juror in this case?

A. No.

Q. And you would be fair to the Government and fair to the defendant?

A. I would.

Q. And render a true verdict to the best of your ability upon the evidence?

A. Yes.

Q. Do you know Mr. Lee Chong?

A. No.

Q. You work on a newspaper, do you not?

A. I work in the bindery department—bindery foreman.

Q. That hasn't anything to do with the newspaper itself?

A. No.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Soares, how long did you say you had known Mr. Miles?

A. I have known him since he was a kid going to school.

Q. Went to school together?

A. No, we went to different schools.

Q. You have known him all your life?

A. I have known him, yes, all my life.

Q. Have you had any social contacts with him at all?

A. No.

Q. Belong to any organization he belongs to?

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A. St. Louis Alumni.

Q. St. Louis College?

A. St. Louis College Alumni.

Q. Have you had any connection with him in a political way?

A. I have not.

Q. You really feel that this lifelong acquaintance with him is not going to make it difficult for you to gauge his testimony just as you would any other witness?

A. Yes.

Q. How well do you know Cunningham?

A. Well, I have known him from what I heard about him and talking to him.

Q. But you don't know him as well as you do Miles?

A. No.

Q. You've heard the various statements that were made to the jury here this morning, the facts of the case and everything; do you know of any reason at all why you couldn't be a perfectly fair juror?

A. I do not.

Q. Mr. Soares, we have your oath that you will do that if you are sworn as a juror in this case?

A. Yes.

Q. And you'll decide the case only on the evidence which will be adduced and give the defendant the benefit of every reasonable doubt?

A. Yes.

Mr. ULRICH: Passed for cause.

(Mr. Lamb being excused by the defendants, Mr. Victor C. Ricketts was drawn as a prospective juror, questioned, and later excused by the defendants. Mr. Alfred T. Burlem [280] was drawn as a juror, and questioned as follows):

Mr. MOORE: Mr. Burlem, you heard the questions the Court asked?

A. Yes.

Q. And if the same questions were asked you now, would your answers be in substance the same?

A. Yes.

Q. Do you know of any reason whatsoever why you could not sit as a fair and impartial juror?

A. No.

Q. And if chosen as such you would be fair to these defendants and fair to the Government?

A. Yes sir.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Burlem, you're with the Hub Clothing?

A. Hub Store.

Q. Do I understand that you do not know any of these people that we have been talking about here this morning?

A. No.

Q. Mr. Miles—you don't know him?

A. No.

Q. And Mr. Cunningham?

A. No sir.

Q. Nor either of the two defendants here?

A. No sir.

Q. Do you know a detective, a man named De Ville?

A. I don't think I know him.

Mr. MOORE: A member of the United States Secret Service.

Mr. ULRICH: Yes, a Government "sleuth."

Mr. MOORE: I guess you can call him that.

A. I might have had business with him in the store, but I don't know him.

Q. Anybody else know Mr. De Ville? [281]

(A Juror): I know De Ville.

Q. You do know him?

A. I know of him.

Q. You don't know him well at all?

A. No, not socially.

Q. And you don't know him at all, Mr. Burlem?

A. No.

Q. You don't know of anybody else connected with the case?

A. No.

Q. And we have your assurance, just as we have from the rest of these jurors, that you'll be absolutely fair to the defendant?

A. Yes.

Q. And give the defendants the benefit of every reasonable doubt?

A. Yes.

The COURT: The Government's fourth peremptory.

Mr. MOORE: Waived.

The COURT: Defendant's eighth.

Mr. ULRICH: Let me ask Mr. Damon (Cyril F.) a question.

(After several questions): The defense will excuse Mr. Damon.

(Robert M. Berthe was drawn as a prospective juror, and questioned as follows):

Mr. MOORE: Mr. Berthe, you heard the questions the Court asked?

A. I did.

Q. And the questions I asked?

A. Yes.

Q. And if the same questions were asked you, would your answers in substance be the same?

A. They would. [282]

Q. Do you know Mr. Miles?

A. No.

Q. Or Mr. Cunningham?

A. No.

Q. Or Mr. Mookini?

A. No.

Q. Or Mr. Lee Sau Chong?

A. No.

Q. Do you know of any reason whatsoever, Mr. Berthe, why you could not be a fair and impartial juror in this case?

A. None whatever.

Mr. MOORE: Passed for cause.

Mr. ULRICH: Mr. Berthe, do I understand that you do not know any of these people?

A. I do not.

Q. You have had no knowledge of the case in any way at all?

A. Other than what I read in the recent paper.

Q. What is your business connection?

A. Foreman, California Packing Company.

Q. Do you know either of these two defendants?

A. I do not.

Q. And you know of no reason why you couldn't be a perfectly fair jurior?

A. None whatever.

Q. And you will be that?

A. Yes.

Mr. ULRICH: Passed for cause.

The COURT: The Government's fifth.

Mr. MOORE: Waived.

The COURT: Defendants' ninth.

Mr. ULRICH: The jury is satisfactory.

Mr. MOORE: The jury is satisfactory.

The COURT: Let the jury be sworn.

(The trial jury is sworn). [283]

Mr. MOORE: May it please the Court, and gentlemen of the jury: The indictment in this case reads as follows: (reads indictment)

Now gentlemen, we'll put on evidence in support of this indictment to prove the following:

That a Civilian Conservation Camp, which is a part of the Department of the Interior, was created and put into operation out at Schofield Barracks during the early part of 1934; that around the first part of April, 1934, Mr. William E. Miles was appointed Camp Director; that the funds to operate these camps, so far as mess is concerned,—and that's the funds that we're interested in in this case—are paid to the Camp Director by the Department of the Interior through the Finance Officer or office at

Fort Shafter; these particular payments were made by Captain Baldwin, who is the Finance Officer; that these funds are paid at the rate of 50¢ per man per day, that is, for each enlisted person, I guess you'd call them, in the Civilian Conservation Corps; that is, the boys that are out there, not the officers, receive for their mess the sum of 50¢ a day, that is, the mess fund gets that, and that's the way they operate the mess; and these funds are turned oevr to the camp director as a disbursing officer to pay for food that's delivered to the Camp. We will show you that, prior to April, the fruit and vegetables to a great extent were purchased at the commissary at Schofield Barracks, which is operated—that is, the concession for fruits and vegetables is operated by Chun Hoon. We will show you that around the first part of April Mr. Robert Mookini became the mess officer, and Mr. John E. Cunningham was the [284] chief cook, and that Mr. William E. Miles was the camp director; that the orders for food were gotten out by Mr. John E. Cunningham, that is, what was necessary to fed these boys, and turned over to Mr. Mookini to make the purchases; that Mr. Mookini purchased by telephone, or went to town himself or went to Schofield or wherever he had to go to get them, and that shortly after appointing Mr. Mookini as mess officer, or him taking over the duties of mess officer, he was introduced to Mr. Lee Sau Chong by Mr. Cunningham here in Honolulu; and they commenced getting fruits and vegetables from Mr. Lee Sau Chong. We will show you that—for the pur-

pose of showing the general scheme, guilty knowledge, and lack of mistake—* at the end of the first month Mr. Robert Mookini instructed Mr. Lee Sau Chong to put his personal grocery bill on the bills going to the Civilian Conservation Corps—*

Mr. ULRICH: Just state that over, will you please, so I get that.

Mr. MOORE: Will you read that, Mr. Reporter.

(Reporter reads portion marked **)

Mr. ULRICH: That is, to charge it to the Government, is that what you're trying to show?

Mr. MOORE: That's exactly it, Mr. Ulrich. That on these vouchers there were charged various items as being delivered to the Civilian Conservation Camp which were not there at all, and Mr. Cunningham as chief cook initialed them as having received them, and those items were to cover his grocery bill. That on or about May 12th, or just a day before May 12th, being Mothers' Day, a party or a Mothers' [285] Day dinner, I guess you might call it, was given out at the Schofield camp; that there were various items listed upon a voucher of May 12th which did not arrive; those are the ones that I read to you in the indictment, the oysters and the squash and the pumpkins; that in this particular case there were two vouchers came out; one came out with the load and it was dated May 12th; and the original items had the oysters and the 400 pounds of pumpkin on it and some crates of strawberries, amounting to $40.75; $17.50 for the oysters, $6.25 for the strawberries, and $17.00 for the pumpkins.

And in addition to that, they had listed on the original bill, limu 25¢, opai $2.00, opelu 50¢, nuts $12.50, mixed candies $16.25, after dinner mints $1.75, paper plates $3.00, napkins $1.50, and crabs $5.40. That this bill, or the copy of the bill, was not returned; Mr. John E. Cunningham kept that out in the camp, but Mr. Mookini went down to Mr. Lee Sau Chong's store as to these last items that should be off the original bill, they were delivered but they took them off in place of those and put various others—that 400 pounds of squash and 400 pounds of pumpkin; and we will show you that the original three items that I just related to you, that is, the oysters, the strawberries, and the pumpkins, which appeared on the one they made out for delivery, were to cover two items; one was an item of flowers to decorate on Mothers' Day, which was $23.00; and the other item is an item to cover a box of booze, three quarts of whiskey and three quarts of gin. We will further show you, gentlemen, that they have out there what they call a Canteen Fund that they have obtained from selling soda-pop and candy and [286] stuff like that, that is not on the regular thing, and when they want to buy anything on the outside which is not strictly mess, that is, food, that's the fund that they should use. We will show you that during the succeeding months that Mr. Mookini had larger and larger grocery bills, that is, personal grocery bills, and that he requested Mr. Lee Sau Chong and Mr. John E. Cunningham to cover up that bill in these vouchers

that went out to the Schofield Conservation Corps as food for the boys in the camp. We will show you that Mr. Cunningham——

Mr. ULRICH: Just a moment. I haven't objected to anything counsel has raised; of course we contend he will not be able to prove a word; but when it comes to the matter of telling the jury that he's going to prove things which the Court is not going to allow him even if he could, namely, other materials that have to do with some other things started and never finished. There's no showing in this complaint, so far as I can read the indictment, of any personal grocery bill being charged to the Government. If evidence is to be introduced along that line, we'll contend at the proper time that it's irrelevant, incompetent, and immaterial. As long as it's understood, however, that the Court will instruct the jury that all of these remarks of counsel are not to be considered as evidence at all, I am quite willing to have him say anything, but I think at least we should have that instruction to the jury at this time.

The COURT: The Court so instructs you, that any statement made by either counsel concerning their testimony, as [287] to what they expect to prove by the evidence, is not evidence and is not to be considered by you as evidence. The evidence you will take as it comes from the witnesses on the witness stand only.

Mr. ULRICH: Is Mr. De Ville here in the courtroom?

Mr. MOORE: Mr. De Ville of the Secret Service is here.

Mr. ULRICH: I'll ask that all witnesses be put under the rule.

Mr. MOORE: I'll ask that the rule be not invoked with reference to Mr. De Ville, as he is an agent of the United States Secret Service, and he is the person who prepared this particular case, that is, collected the evidence, and during this trial he will probably be called upon by myself for assistance as to any fact that I may overlook. In cases tried in this court for a number of years we've had men who are the head of a department stay in the courtroom. Mr. De Ville is the only Secret Service agent here, and we don't believe that the rule should be invoked as to Mr. De Ville.

The COURT: The fact that he is a Secret Service agent would not entitle him to an exemption.

Mr. MOORE: No, Your Honor.

The COURT: If he's required for assistance to your office and the application is placed on that ground, it will be considered.

Mr. MOORE: Well, Your Honor, I might state that I expect to have and wish to have Mr. De Ville sit alongside of me in the trial of this case so that he can be handy as to anything that I may overlook.

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The COURT: If Mr. De Ville's connection with the preparation of this case is such as to make his attendance helpful and necessary——

Mr. MOORE: It is, Your Honor.

The COURT: It will be granted.

Mr. MOORE: It is, your Honor.

The COURT: But on that ground; not on the ground that he's a Secret Service agent with the Government.

Mr. ULRICH: I think there's another witness—Mr. Kemp.

Mr. MOORE: No, I'm not going to use him. We will show you that Mr. Cunningham remonstrated, and that he was told by Mr. Robert Mookini that there was a lot of cooks that were looking for jobs and that if he knew what was good for him he had better fix it up.

We will show you that Mr. Lee Sau Chong stated, with reference to this bill of May 12th, that the items listed upon that voucher were known by him to be correct; we will show you that Mr. Lee Sau Chong personally delivered these groceries and food and flowers on the deliveries made the following day; we will show you that he signed various vouchers for the manager of Lee Chong, and that he is connected with that concern. We will show you that he had various conversations with Mr. Cunningham during this period of time, that is, between April and September of last year, and that he had full knowledge and it was at his direction and that he was a party to the making and presenting of these false vouchers, and that he knew that they were false and fictitious when they went out.

We will show you that on September 1st they had a luau [289] out in the Civilian Conservation Camp, and just prior to September 1st there was a list of goods delivered to the Civilian Conservation Camp which included wire netting, kiawe wood, and various things which are not food and which should be paid out of the Canteen Fund, and took and listed those as groceries actually delivered; they were listed as yams, honey dew melons, 300 pound pumpkin, 15 gallons of mayonnaise, 10 pounds dried mushrooms; that included various things for the luau, and also flowers and leis for the guests.

We will show you that, after this investigation started, Mr. Lee Sau Chong admitted that he knew that various of these vouchers were not correct when they were sent out and that they were billed to cover something else and not what was actually sent you.

We will show you the same as to Robert Mookini, and we will show you, of course, that this all happened here on this Island, in this City and County of Honolulu, and that it is within the jurisdiction of this Court.

The COURT: Now, before the first witness is called I'll ask counsel and the reporter to pay particular attention to what the Court is about to say, as I have at this time a comment to make that I have not made before but which I believe will be helpful in the proper trial of this case.

You noticed from the reading of the indictment, gentlemen of the jury, that it contained two

counts. Now, that is simply the technical term—"count"—for what you would call the case; it means there were two different crimes or charges made against these defendants; and you [290] should consider the evidence as you hear it as bearing upon one count or the other; but that's not the main point I wish to call your attention to, which is this, which will doubtless be enlarged upon when the formal instructions are given you after they have been presented by respective counsel and settled, and that is this: That you are to consider each of these defendants as though each was alone on trial, and that under the law you may find one defendant guilty and another innocent, or both guilty, or both not guilty; and in considering the evidence as you hear it from the witnesses, the Court feels it's much better that your attention be called to it now than called after you have heard the testimony, because, as I say, while the Court at this time does not know what evidence will be presented, it is altogether probable that certain of the evidence will involve one of these defendants and not the other, and vice versa; and it should be helpful to you to keep that in mind as you will listen to this evidence.

A third point, and the last one I wish to speak of, is this: One defendant on trial is Lee Sau Chong, but the Lee Chong Company has been referred to a number of times. Now remember, Lee Sau Chong is the individual who is now being tried. The Lee

Chong Company is not on trial; it is, I believe, the copartnership for which the defendant Lee Sau Chong works or by whom he is employed, and it is possible, as a statement made by counsel, that it will be shown that he is manager of that Company, but that the Court does not know; but keep these names "Lee Sau Chong" and "Lee Chong Company" distinct in this testimony. Remember that two different offenses are being tried [291] together and that certain evidence may either tend to establish the innocence or the guilt of one defendant and not the other; and keep those questions clearly in your mind as you listen to this testimony. Formal instructions will be given you at the close of the testimony and after counsel have argued the case, but, as I said at the outset, breaking away from precedent, these remarks are made in the hope they will be helpful to you and helpful in obtaining a correct solution of this case.

Do either counsel wish to except to the statement now finished, or to enlarge upon it?

Mr. ULRICH: No exception, Your Honor; I think it very well stated the law.

The COURT: Mr. Moore, have you any exception?

Mr. MOORE: No, Your Honor.

The COURT: Would you care to enlarge upon what the Court has already stated?

Mr. MOORE: I think that there is one matter that I overlooked telling the jury here, as to the

situation of the other defendants who are not on trial; that would probably take a minute to bring it out.

In this case, gentlemen, there are two defendants now on trial; there were four indicted. One defendant, John E. Cunningham, has pleaded guilty. The defendant William E. Miles has been severed; that means that, instead of trying Miles and Mookini and Lee Sau Chong together, that William E. Miles is entitled to a separate trial.

Mr. ULRICH: I think you've told them that one before.

I'll tell them again, in my way, that Lee Sau Chong [292] and the four of them together were indicted; Mr. Miles pleaded guilty; Cunningham, with the consent of the prosecution, was put off by himself, so that he'll be tried separately or later—that is, we assume he'll be tried; however, the record as it now stands merely shows that there are only two men being brought to trial—or Mookini and Lee Sau Chong.

The COURT: And the Court will add, gentlemen of the jury, that you should try this case as though you knew nothing in the world about either Miles or Cunningham in connection with this case, just the same as though it was only these two defendants that have been named, because what disposition has been made or will be made in regard to Miles and Cunningham is not a matter of any concern to this jury at this time. You're concerned with the one question of determining whether or not these de-

fendants or either of them are guilty of the offenses charged, and if guilty it's your duty to find them so; if not guilty, it is equally your duty to find them not guilty. The Court is ready to proceed with the evidence.

Mr. MOORE: May we have a recess at this time, Your Honor; then we'll get one witness over from the Territory. Mr. Marshall, will you call Mr. Lloyd.

The COURT: The Court will grant a short recess at this time; it will be the only recess we have between now and the adjournment.

(Recess—10:55 to 11:05 a. m.)

JAMES W. LLOYD

being first duly sworn, testified as follows: [293]

Direct Examination

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. James W. Lloyd.

Q. You have heard of the Civilian Conservation Corps?

A. Yes sir.

Q. Have you any connection with that, Mr. Lloyd?

A. I have.

Q. And what is your connection with the Civilian Conservation Corps?

A. Business administrator anrd purchasing and contracting officer.

(Testimony of James W. Lloyd.)

Q. Do you know Mr. William E. Miles?

A. I do.

Q. Did he ever have anything to do with the Civilian Conservation Corps?

A. He did.

Q. And when was he appointed, if you know, Mr. Lloyd?

A. He was appointed first in the month of January as assistant director, and then on the 16th of April he was appointed director.

The COURT: What year?

A. 1934; pardon me, sir.

Mr. MOORE: Where is this Camp located, Mr. Lloyd?

A. Schofield Barracks.

Q. On this Island?

A. Yes sir.

Q. And how long did he told office—withdraw that question.

He is not the Camp Director at this time?

A. No sir.

Q. When did he cease to be Camp Director?

A. On the 11th of October, 1934. [294]

Q. As Camp Director did he receive any funds?

A. He did.

Q. And from what department did those funds emanate?

A. From the Interior Department of the Federal Government.

Q. How were they paid over to Mr. Miles?

(Testimony of James W. Lloyd.)

A. By check of the Finance Officer, drawn in settlement of a voucher for subsistence payment upon 50 cents per day per man.

Q. And the men—this 50¢ per day per man—what men were they?

A. Enrolled men.

Q. Of the Civilian Conservation Corps?

A. Of the Civilian Conservation Corps.

Q. At Schofield Barracks?

A. Yes sir.

Q. And those funds so received by Mr. Miles were for what purpose?

A. Subsistence of the men.

Q. And by "subsistence" you mean the food?

A. Yes sir.

Mr. ULRICH: Just a moment. Let this witness testify to anything that he knows of the rules and regulations. If it is in fact for subsistence only, and that's a rule or something, we don't know just what he's giving us; all I want to be assured is that he's giving us testimony which is his understanding of the regulations.

(Mr. Moore whispers to Mr. Ulrich)

Mr. ULRICH: I still don't understand, if Your Honor please, whether this witness is testifying to a regulation that there should be, for example, that he couldn't buy any napkins, salt cellars, or anything except actual edibles, however much they might need them; whether that was a rule [295] of the Interior Department or of his office, or just

(Testimony of James W. Lloyd.)

what he's testifying to. He said it was for subsistence only; I don't know what that means. I think that that question is eliciting evidence that is unintelligible unless we do know.

The COURT: As the Court understands, Mr. Lloyd is the superior officer of this whole C. C. C. work in the Territory—the administrator—and is speaking from his knowledge as such relative to the operation of the C. C. C., is that correct, Mr. Lloyd?

A. Yes sir.

The COURT: Now, will you clear up one matter for the Court. You spoke of a check of the finance officer. Finance officer of what?

A. Finance officer of the United States Army at Fort Shafter.

The COURT: Proceed, Mr. Moore.

Mr. MOORE: Do you know a Mr. Robert Mookini?

A. I do.

Q. Is he in the courtroom here?

A. Yes sir.

Q. Will you indicate who he is, please.

A. The gentleman with the white suit sitting right back of Mr. McGhee.

Mr. MOORE: One of the defendants in this case.

Q. Did he ever have any connection with the Civilian Conservation Corps camp that you know of?

A. He did.

(Testimony of James W. Lloyd.)

Q. And when was that, Mr. Lloyd?

A. Between the dates of January 28th, 1934, and October 17th, 1934.

Q. Do you know what his capacity was out there, that is, what his office was? [296]

A. He was Recreational Officer.

Q. Any other duties at all, that you know of?

A. He was also made, well, I might call it "Mess Officer", by the Camp director.

Q. Who actually paid out the money for the subsistence of these men at the Civilian Conservation Corps?

A. The Camp Director.

Q. And do you know how that was done?

A. By check.

Q. Anything supporting the check?

A. Vouchers, naturally.

Mr. MOORE: You may cross-examine.

Cross-Examination

By BARRY S. ULRICH, Esq.

Q. Just to get your different offices defined; do I understand that you, as the head man—if we may put it that way—you appointed Mr. Miles to his position as Camp Director?

A. Yes sir.

Q. You did that?

A. All appointments, though, are subject to confirmation from Washington.

Q. Subject to confirmation from Washington?

A. Yes.

(Testimony of James W. Lloyd.)

Q. You appointed Mr. Miles camp director and you also removed him, didn't you?

A. Yes sir.

Q. In October of last year?

A. Yes sir.

Q. You say that Mr. Mookini was appointed as Recreation Officer?

A. Yes. [297]

Q. You appointed him Recreation Officer?

A. Yes sir.

Q. Do I understand that you gave him any additional appointment yourself?

A. No sir; those duties were assigned to him by the Camp Director.

Q. Beg pardon?

A. Those additional duties were assigned to him by the Camp Director.

Q. In other words, anything that you may have done outside of this appointment as Recreation Officer is just what has come to you from the Camp Director—what they told you?

A. Correct.

Mr. ULRICH: No further cross-examination of this witness.

The COURT: The Court would like to ask a few questions of Mr. Lloyd.

Q. Is the plan of administration for the C. C. C. camps in Hawaii the same as for the C. C. C. camps throughout the Mainland?

(Testimony of James W. Lloyd.)

A. That I'm not prepared to say; I can't answer that. I am given to understand that most of the C. C. C. work on the Mainland is directly under the Army and that, with the exception of Porto Rico and Hawaii, it's constructed a little bit different, in the same manner as our setup is here today, the Army merely acting as disbursing officer of the funds.

Q. Where did you get your regulations and plan of operations?

A. From the National Park Service in Washington, through the Interior Department.

Q. In what form does that come to you?

A. In the shape of a handbook, with supplements and additions. [298]

Q. Those regulations are modified from time to time, are they?

A. Yes sir.

Q. They come to you from the Park Service?

A. Yes sir.

Q. Is that the Service that confirms your appointments?

A. The Park Service, Your Honor, is a division of the Interior Department; these appointments that I speak of require the confirmation of the Secretary of the Interior, the approval of the Secretary of the Interior.

Q. The Secretary of the Interior is really, then, the approving officer?

A. Yes sir.

The COURT: Anything further, Mr. Moore?

(Testimony of James W. Lloyd.)

Mr. MOORE: No, Your Honor.

Mr. ULRICH: Just one or two questions.

Q. You testified, Mr. Lloyd, these moneys that you have been talking about as "subsistence" moneys were for a mess fund?

A. Yes.

Q. And that they were only for foodstuffs?

A. Yes sir.

Q. Of course they had to have napkins and forks and things like that out there; how were they paid for?

A. Out of the Camp Equipment Fund.

Q. That was a separate fund—Camp Equipment Fund?

A. Yes.

Q. But it was Government money just the same?

A. Oh yes.

Q. Yes, you carry one fund, call it "Mess Fund", and you have a "Camp Equipment Fund" which is booked, if we may say it, differently—in separate accounts?

A. That's correct.

Mr. ULRICH: That's all. [299]

Re-direct Examination.

By WILLSON C. MOORE, Esq.

Q. These camp equipment funds, those were not turned over to the Camp Director, were they?

A. It's part of the camp equipment, surely.

Q. I mean, the funds for the purchases?

A. No; those were purchased direct.

(Testimony of James W. Lloyd.)

Q. The only funds that he had was for mess?

A. Yes sir.

Mr. MOORE: That's all.

Mr. ULRICH: As a matter of fact, there were several different funds; they had a Canteen Fund out there also, didn't they?

A. Yes, but that's a separate thing altogether; that's contributed by the men themselves.

Mr. MOORE: The camp equipment fund—I understand the equipment was bought through some other officer not connected with the camp?

A. Correct.

Q. So that if he wanted any more equipment he had to make special application to you, or something of that sort?

A. Yes sir.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

The COURT: You're excused, Mr. Lloyd.

Mr. MOORE: The next two witnesses that I have will probably take a considerable length of time. As I understand, Your Honor wanted to adjourn as close to half past eleven as possible, I think possibly that this is a good place to stop, because we would just get started on something when we would have to leave it right in the midst. [300]

The COURT: Yes, unless you could at least finish the direct testimony, say, by quarter to twelve, I would prefer to adjourn at this time.

Mr. MOORE: May it please the Court, I feel that the examination of the next two witnesses I

(Testimony of James W. Lloyd.)

would call would take at least an hour on direct, and possibly more.

The COURT: Gentlemen of the jury, the Court at this time admonishes you not to talk about this case to anybody, even to your fellow jurors, until it is submitted to you. I would also suggest that you refrain from reading comments on the evidence that might appear in the papers, if any. Keep your minds open so that you can obtain the moving impressions from the witnesses and from the argument of counsel and instructions of the court that will hereafter be given you. The Court will now adjourn until 9 o'clock tomorrow morning; be in your places promptly at that hour.

(Adjourned—11:18 a. m.) [301]

The above entitled matter came duly on for further trial at 9:00 a. m. on Tuesday, May 14th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants and their respective counsel being present;

WHEREUPON, the following further proceedings were had and testimony adduced:

CLERK (After calling the jury roll): The jury is present.

Mr. MOORE: Ready for the United States.

Mr. ULRICH: Ready for the defendants.

The COURT: Let the Court at this time suggest that as soon as either attorney have their requested instructions prepared they present the

opposing counsel with a copy, so that it may facilitate the work when it comes to settling instructions later. [302]

WILLIAM E. MILES

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By Willson C. Moore, Esq.

Q. What is your name, please?

A. William E. Miles.

Q. You are a defendant in this case, Mr. Miles?

A. I am.

Q. And you understand that you do not have to testify unless you so desire?

A. I do.

Q. Are you willing at this time to testify?

A. I do.

Q. Did you ever have anything to do with the Schofield camp of the Civilian Conservation Corps?

A. I did.

Q. And what connection did you have with that camp, Mr. Miles?

A. I was first Assistant Camp Director, then made Camp Director.

Q. And when were you made Camp Director?

A. (After consulting memorandum): I have the exact dates here; I was made Camp Director on April 16th, 1934.

(Testimony of William E. Miles.)

Q. And when were you relieved as Camp Director?

A. On October—I resigned on October 13th, I think it was; it was immediately after the 10th——

Q. Anyway, sometime during the month of October?

A. Yes sir.

Q. What year?

A. 1934. [303]

Q. As Camp Director of the Schofield camp of the Civilian Conservation Corps did you have anything to do with the messfunds?

A. Yes, I was in charge of it.

Q. And where did you get your funds?

A. From the Finance Officer at Fort Shafter.

Q. And what controlled the amount of funds that you obtained?

A. What's that question again?

Q. In other words, what was the basis upon which you received these funds?

A. That was the ration allowance of the enrolled members of the camp, the men themselves, figured at the rate of 50 cents per day. At the end of the month the aggregate amount of the average per day per man in camp is submitted to the Finance Officer, and upon that basis of 50 cents per head we are drawn a check for the amount.

Q. Then each succeeding month you received the funds for the previous month?

(Testimony of William E. Miles.)

A. For the previous month's attendance.

Q. And that was based upon the roll of the number of men in the camp?

A. Correct.

Q. When you received these funds what did you do with them?

A. I deposited them in the Bishop First National Bank at Schofield Barracks.

Q. And was there any particular name of that account?

A. Camp Director, C. C. C. Camp, Schofield Barracks.

Q. And what was the character of these funds; by that I mean whether or not they were Government, personal, or otherwise? [304]

A. That's Government funds; Department of the Interior, United States Government.

Q. Do you know Mr. Robert Mookini?

A. I do.

Q. During the time that you have testified that you were connected with this Civilian Conservation camp, was Mr. Mookini connected with it?

A. Yes, he was.

Q. In what capacity?

A. As Athletic Officer.

Q. When was that?

A. That was in January—well, I went after they were in; I went on January 29th; they were in before I was in.

(Testimony of William E. Miles.)

Q. Mr. Mookini was there before you went in?

A. Yes.

Q. Did he ever hold any other position besides Athletic Officer?

A. In the latter part of February he was Mess Officer, just before Mr. Mahaffy was relieved as Camp Director.

Q. When you were assistant camp director who was camp director?

A. Mr. Mahaffy.

Q. When Mr. Mahaffy was relieved, who succeeded him?

A. I succeeded him.

Q. And while you were camp director—withdraw that question. During the time that you were camp director, who was mess officer?

A. Mr. Mookini.

Q. And as mess officer what were his duties?

A. He was in charge of the subsistence of the men in the camp and the mess hall and kitchen. [305]

Q. Who had to do with the purchasing of the food for the men?

A. Mr. Mookini, with the camp steward or chief cook; they rank him as chief cook.

Q. Who was the camp steward and chief cook?

A. John Cunningham.

Q. When the food was purchased, how was it ultimately paid for?

A. By check.

Q. Drawn by whom?

(Testimony of William E. Miles.)

A. By myself.

Q. On what?

A. On the Bishop First National at Schofield Barracks.

Q. On what particular account?

A. Camp Director, C. C. C. Camp, Schofield.

Q. Is that the account you referred to here a few moments ago?

A. That's the mess account; that's the only account we have.

Q. And in paying those accounts was there anything that supported the checks, that is, any paper that went along with it?

A. Yes, the usual invoices submitted by the caterer, claims made on the camp for purchases made for the subsistence of the men.

Q. Do you know Lee Sau Chong?

A. I do.

Q. Did you know him in a business way while you were connected with the Civilian Conservation Camp?

A. Yes.

Q. And what was the nature of that business?

A. He operated a sort of supply depot in town here, furnishing vegetables, fruits, and groceries.

Q. To whom did he supply these groceries?

A. To the C. C. C. Camp at Schofield Barracks. [306]

(Testimony of William E. Miles.)

Q. Did he ever get any pay for those supplies?

A. Get any pay for the supplies—yes.

Q. Who paid him?

A. I did.

Q. On more than one occasion?

A. Yes.

Q. Approximately—have you got any idea approximately how many times you paid him for stuff out there?

A. Well, there was the month of—I believe it started in March; April, May, June, July, August, September, October, eight months.

Q. When you were assistant camp director, under Major Mahaffy, do you know where the fruits and vegetables to a great extent were purchased for the Civilian Conservation Corps there?

A. Yes; they were purchased from the commissary depot at Schofield Barracks, and also through Chun Hoon, who has a concession at Schofield Barracks, through the Post Exchange.

Q. That is, Chun Hoon has a vegetable——

A. Concession.

Q. From the Post Exchange?

A. Well, it's considered, I understand, as part of the Post Exchange, a concession which was granted Mr. Chun Hoon.

Q. After you became camp director and Mr. Mookini became mess officer, where were these fruits and vegetables purchased to a great extent, if you know?

(Testimony of William E. Miles.)

A. Well, for the first few months there was continued buying from Chun Hoon, and buying from Lee Chong, and toward the latter part of it practically all of the purchases were made from Mr. Lee Chong.

Q. Do you recall the evening or the occasion of Mothers' Day, 1934? [307]

A. I do.

Q. Just prior to that day did you see Lee Chong?

A. Yes, I did.

Q. When you speak of Lee Chong, whom do you mean, Mr. Miles?

A. The gentleman sitting right there (indicating).

Q. The man with the dark coat here (indicating)?

A. Yes.

Mr. MOORE: Indicating the defendant, who is indicted under the name of Lee Sau Chong.

Q. And where did you see him, Mr. Miles?

A. In the camp grounds there.

Q. And do you know what he was doing in the camp at that time?

A. On the day prior to Mothers' Day?

Q. That's it.

A. Yes; he was delivering the groceries that was ordered for the camp.

Q. Did you check the goods that were delivered that day?

(Testimony of William E. Miles.)

A. I did not. I left word with Mr. Cunningham that I would like to see Mr. Lee Chong if possible, if he came into camp to notify him that I would like to see him before he left camp.

Q. Now Mr. Miles, upon the delivery of the goods at the Schofield camp were there any receipts of any kind given?

A. To the vendor?

Q. That's right.

A. Yes.

Q. And who gave those receipts?

A. Well, the chief cook, Cunningham, or whoever checked in the goods upon delivery, signed the receipt for them; in some instances Mr. Mookini checked in some of those himself.

Q. Were there more than one copy of this receipt or voucher, or whatever it is? [308]

A. I always received one copy in the office.

Q. Did you ever receive the original?

A. No, I never saw the original; we always got the duplicate.

Q. Do you know what became of the original?

A. I do not know.

(Mr. Moore shows a document to opposing counsel.)

Mr. MOORE: Showing you what appears to be——

Mr. ULRICH: Just a minute, before we describe the paper and read it to the jury. This, if Your Honor please, brings up the question that I had

(Testimony of William E. Miles.)

expected to raise, as I believe I indicated to the Court before on a motion for a return of evidence. It's my understanding of the law that the records should come in through the defendant himself and that they can't be brought in involuntarily otherwise. I am expecting to argue that point at this time. If counsel would like to have it done without the presence of the jury, it's quite all right. It raises a question of law that has to be presented at some time, and I am expecting to argue it now.

Mr. MOORE: May it please the Court, these are not sought to be introduced in evidence by this witness. At a later time they will be sought to be introduced, and I think that the proper procedure is to await the time until they are offered in evidence. At this time, of course, we propose to offer them for the purpose of identification. That does not mean in any way, shape or form that they go to the jury until they are offered in evidence.

The COURT: The Court would suggest that the document which the United States Attorney has be marked for identification by the Clerk.

Mr. MOORE: I'll have the witness identify the initials. [309]

The COURT: Then the record can show what document is referred to without disclosing its contents to the jury.

Mr. MOORE: Showing the witness what purports to be——

(Testimony of William E. Miles.)

Mr. ULRICH: Just a moment. If you're going to describe the document you might just as well have it read to the jury. It's my contention this has to go through our witnesses and not through the prosecution's. I object to having it read to the jury or described.

Mr. MOORE: I'm not reading the contents; I'm just reading the identifying particulars so that we know what we're talking about.

Mr. ULRICH: No occasion for reading or describing the document; if the witness identifies the document, then it's marked by the Clerk, and that's all that's necessary.

The COURT: Will you let the Court see what you have, Mr. District Attorney.

(Mr. Moore hands document to the Court.)

The COURT: This is all part of one; two sheets in one?

Mr. MOORE: Original and copy, Your Honor.

The COURT: Mr. Clerk, will you please mark this for identification (handing document to Clerk).

Mr. MOORE: I'll have the original marked, Your Honor, as one exhibit, and the copy marked as another exhibit for identification.

CLERK: United States Exhibit No. 1 and United States Exhibit No. 2, the carbon being marked No. 2, for Identification.

Mr. MOORE: Showing the witness United States Exhibit No. 1 for Identification; do you know what that is, Mr. Miles?

(Testimony of William E. Miles.)

A. Yes, I know what it is now.

Q. What is it? [310]

A. It's the invoice submitted by Lee Chong Company——

Mr. ULRICH: Just a moment, if Your Honor please. This objection of mine is made in good faith, if the Court please, for the purpose of presenting this case in an orderly fashion to the jury. If the witness can explain the document, might as well have it in. As a matter of fact, I'm gradually getting to the point where it might as well go in; but I still insist this has been introduced for identification only; that the witness can't describe it, counsel can't describe it, until introduced into evidence and received as such; then we'll have plenty of description.

The COURT: It shall not be read to the jury by anybody unless it's offered in evidence and admitted by the Court.

(Argument).

The COURT: Mr. Witness, let me have the document, please.

(Witness hands document to the Court.)

The COURT: Mr. witness——

A. Yes, Your Honor.

The COURT: This document marked "United States Exhibit 1", let me ask you, was this an invoice presented to you as camp director for payment of articles alleged to have been furnished to the C. C. C. Camp?

(Testimony of William E. Miles.)

A. (After looking at document) No sir, not this.

Mr. MOORE: Calling your attention to the initials at the bottom of the page of United States Exhibit 1 for Identification, written in blue ink, do you know whose initials those are?

A. I recognize the initials as Mr. John Cunningham's.

Q. And Mr. Cunningham at the date, that is, May 12th, what was his position with reference to the camp? [311]

A. He was chief cook.

Q. Calling your attention to United States Exhibit 2 for Identification, particularly to the signature at the bottom of the page, do you know that signature?

A. Yes.

Q. Whose signature is it?

A. Robert K. Mookini.

Q. And what was his position on May 12th with reference to the Civilian Conservation Camp?

A. Mess officer.

(Mr. Ulrich obtains from the Clerk these two exhibits).

Mr. MOORE: Showing the witness a document dated May 12th, 1934——

The COURT: Has it been marked for identification?

(Testimony of William E. Miles.)

Mr. MOORE: Just a moment and I'll get it. Do you know the signature on the bottom of that, written in pencil?

A. I do.

Q. Whose signature is it?

A. Robert Mookini.

Mr. MOORE: I'll ask that this be marked for identification.

(Marked "United States Exhibit No. 3 for Identification").

Mr. MOORE: Showing you a document here, and calling to your attention some pencil writing at the bottom of the page; do you know who wrote that?

A. That's Mookini's scrawl.

Mr. MOORE: I'll ask that this document be marked for identification.

(Marked "United States Exhibit No. 4 for Identification")

Mr. MOORE: Calling your attention again to United States Exhibit No. 4 for Identification, did you ever see that document at the Civilian Conservation Camp? [312]

A. Yes; this is the Camp file invoice; payment was made on this.

Q. Payment was made on that voucher?

A. Yes.

Q. Showing you a document here, and calling your attention to the signature indicated here; do you know whose signature that is?

(Testimony of William E. Miles.)

A. That's Mr. Lee Chong's.

Q. Is it the man referred to here as Lee Sau Chong?

A. Yes.

Mr. MOORE: I'll ask that this document be marked for identification.

(Marked "United States Exhibit No. 5 for Identification")

(Mr. Moore shows a check book to Mr. Ulrich)

Mr. MOORE: Showing you a book here; do you know what that is?

A. That's the camp check book, against the camp mess fund.

Q. Is this the check book that covers the account that you spoke of in the Bishop First National Bank?

A. It is.

Mr. MOORE: I'll ask that this check book be marked for identification.

Mr. ULRICH: That check book may be received in evidence, if Your Honor please; our contention does not go to that; that's from the Government's custody, it's their own record. I have no objection to the introduction of that in evidence.

Mr. MOORE: At this time, may it please the Court, we offer the check book in evidence?

The COURT: How is it designated?

Mr. MOORE: I imagine it will be designated as United States Exhibit "A" in evidence.

The COURT: It will be admitted. [313]

(Marked "United States Exhibit A")

(Testimony of William E. Miles.)

Mr. MOORE: Calling your attention to a check in this book numbered 14 and dated June 6, 1934; do you know what that check was for?

A. Number 14, $901.60; well, it's to pay Lee Chong for the May claims.

Q. Has it any relation to U. S. Exhibit No. 5, showing you the exhibit?

A. It has, it is.

Q. And what relation does it have to that particular exhibit?

A. To pay for subsistence that was furnished by Lee Chong Company to the Camp.

Q. Does that check cover the amount of that Exhibit, which is U. S. Exhibit No. 5 for Identification?

A. It does.

Q. Calling your attention to the reverse side of that check; whose signature appears on the upper line of the endorsements?

A. I recognize that signature as Mr. Lee Chong's.

(Mr. Moore hands check book to Mr. Ulrich; defendants look over check book).

*Mr. MOORE: Showing you U. S. Exhibit 4 for Identification, that you testified to was part of the records of the Civilian Conservation Camp; I'll ask you to look over this Exhibit carefully and tell us whether you questioned anyone about any item appearing upon that exhibit?

(Testimony of William E. Miles.)

Mr. ULRICH: If Your Honor please, I have come to the conclusion that, in the interest of clarity and furnishing the jury, we should put all of these things in at this time. I am going to withdraw the objection to that I heretofore made [314] to the introduction of these records, and I consent to their introduction through the witness at this time; it would be impossible to cross-examine the witness otherwise, so I withdraw the objection.

Mr. MOORE: At this time, may it please the Court, we offer U. S. Exhibit 1 for Identification, in evidence.

The COURT: Let it be received.

(Marked—"United States Exhibit B")

U. S. EXHIBIT "B".
Admitted.
Crim. #8518 U. S. Exhibit #1. Marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

Chun Yau Chee
Successor to Lee Chong Co.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Fresh Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Oysters	3.50	" 100's	17.50

(Testimony of William E. Miles.)

200	"	Paper Plates	1.50	" "	3.00
1000	"	" Napkins			1.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
25	Bskts.	Fresh Strawberries	.25	" Bskt.	6.25
12	lbs.	" Crab (Large)	.45	" lb.	5.40
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	" Celery	2.00	" "	8.00
6	Bchs.	Parsley	.05	" Bch.	.30
12	"	Turnips	.10	" "	1.20
4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
2	Case	Red Table Apples	2.55	" Case	5.10
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Dozen Bchs.	Spring Onion	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	.20	" lb.	5.00

2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
3	Rolls	Lemo			.25
		Opai			2.00
		Dried Opelu			.50
50	lbs.	Mixed Nuts	.25	" lb.	12.50
65	lbs.	Ass't Candy	.25	" "	16.25
1	Box	After Dinner Mint			1.75
1	lb.	Hot Pepper			.30
60	lbs.	Cooking Bananas	.06	" lb.	3.60
400	"	Pumpkin	.04¼	" "	17.00
					$231.00

Received the above articles:
(s) J. E. C.

(Testimony of William E. Miles.)

Mr. MOORE: I now offer U. S. Exhibit 2 for Identification, in evidence.

The COURT: It will be received.

(Marked—"United States Exhibit "C")

U. S. EXHIBIT "C"
Admitted.

Crim. #8518 U. S. Exhibit #2. Marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

Chun Yau Chee
Successor to Lee Chong Co.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Fresh Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Oysters	3.50	" 100's	17.50

200	"	Paper Plates	1.50	" "	3.00
1000	"	" Napkins			1.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
25	Bskts.	Fresh Strawberries	.25	" Bskt.	6.25
12	lbs.	" Crab (Large)	.45	" lb.	5.40
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	" Celery	2.00	" "	8.00
6	Bchs.	Parsley	.05	" Bch.	.30
12	"	Turnips	.10	" "	1.20
4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
2	Case	Red Table Apples	2.55	" Case	5.10
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Dozen Bchs.	Spring Onion	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
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		Opai			2.00
		Dried Opelu			.50
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65	lbs.	Ass't Candy	.25	" "	16.25
1	Box	After Dinner Mint			1.75
1	lb.	Hot Pepper			.30
60	lbs.	Cooking Bananas	.06	" lb.	3.60
400	"	Pumpkin	.04¼	" "	17.00
					$231.00

Received the above articles:
(s) J. E. C.

(Testimony of William E. Miles.)

Mr. MOORE: I offer U. S. Exhibit 3 for Identification, in evidence.

The COURT: It is ordered admitted.

(Marked—"United States Exhibit D")

U. S. EXHIBIT "D".
Admitted.

Crim. 8518 U. S. Exhibit #3 marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

(In pencil) delivered by Lee Chong

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Mixed Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Fresh Oysters	3.50	" 100's	17.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	Calif. Celery	2.00	" "	8.00
6	Bchs.	Ame. Parsley	.05	" Bch.	.30
12	"	White Turnips	.10	" "	1.20

4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
6	Cases	" Red Apples	2.55	" Case	15.30
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Doz. Bchs.	Spring Onions	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	20.	" lb.	5.00
2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
1	lb.	Hot Pepper	.30	" "	.30
60	lbs.	Cooking Bananas	.06	" "	3.60
400	"	Pumpkin	.04¼	" "	17.00
400	"	Fresh Spinach	.04	" "	16.00
400	"	White Squash	.05	" "	20.00
40	"	Fresh Lima Beans	.08	" "	3.20
				Total	231.00

Received the above articles
(s) ROBERT K. MOOKINI.

(Testimony of William E. Miles.)

Mr. MOORE: I offer U. S. Exhibit 4 for Identification, in evidence.

The COURT: It will be admitted.

(Marked—"United States Exhibit E")

U. S. EXHIBIT "E".
Admitted.
Crim. 8518 U. S. Exhibit #4 marked for ident.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco

(In pencil) delivered by Lee Chong

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market

Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., May 12, 1934

"C. C. C. Camp" Schofield Barracks Upperpost
Schofield Oahu T. H.

400	lbs.	Strained Mixed Poi	@ .04	Per lb.	$16.00
250	"	Papaias	.03	" "	7.50
500	Only	Fresh Oysters	3.50	" 100's	17.50
5	Bags 100's	Sweet Potatoes	1.50	" Bag	7.50
100	lbs.	Carrots	.02	" lb.	2.00
5	Dozen	Calif. Lettuce	1.20	" Doz.	6.00
4	"	Calif. Celery	2.00	" "	8.00
6	Bchs.	Ame. Parsley	.05	" Bch.	.30
12	"	White Turnips	.10	" "	1.20

4	Cases 200's	Oranges	2.85	" Case	11.40
108	lbs.	Cantaloupes	.15	" lb.	16.20
10	Bchs.	Table Bananas	1.00	" Bch.	10.00
6	Cases	" Red Apples	2.55	" Case	15.30
1	"	Lemons	5.25	" "	5.25
1	"	Grapefruits	2.60	" "	2.60
2	Doz. Bchs.	Spring Onions	.40	" Doz.	.80
3	" "	Radishes	.40	" "	1.20
5	Pails	Jelly	2.50	" Pail	12.50
25	lbs.	Dried Shrimp	.28	" lb.	7.00
2	Bchs.	Chinese Parsley	.10	" Bch.	.20
25	lbs.	Bell Pepper	20.	" lb.	5.00
2	Dozen	Alligator Pear	1.25	" Doz.	2.50
30	lbs.	Table Raisin	.19	" lb.	5.70
5	Dozen	Cucumbers	.65	" Doz.	3.25
100	lbs.	Fresh Tomatoes	.06	" lb.	6.00
1	lb.	Hot Pepper	.30	" "	.30
60	lbs.	Cooking Bananas	.06	" "	3.60
400	"	Pumpkin	.04¼	" "	17.00
400	"	Fresh Spinach	.04	" "	16.00
400	"	White Squash	.05	" "	20.00
40	"	Fresh Lima Beans	.08	" "	3.20
				Total	231.00

Received the above articles
(s) ROBERT K. MOOKINI.

(Testimony of William E. Miles.)

Mr. MOORE: I now offer U. S. Exhibit 5 for Identification, in evidence.

The COURT: It will be admitted.

(Marked—"United States Exhibit F")

U. S. EXHIBIT "F".
Admitted.

Crim #8518 U. S. Exhibit #5 marked for ident.

Chun Yau Chee
Successor to Lee Chong Co.

STATEMENT.

P. O. Box 1958 Telephone 5901

Honolulu, T. H., May 31st, 1934.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market
Groceries

"C. C. C. Camp." Schofield Barracks Upperpost.
Schofield Oahu T. H.

May 1st,	1934	Mdse.	$185.58
" 4th,	"	"	90.30
" 10th,	"	"	23.21
" 12th,	"	"	231.00
" 16th,	"	"	127.75
" 17th,	"	"	72.80
" 23rd,	"	"	70.34
" 25th,	"	"	59.55
" 29th,	"	"	41.12
		Total	231.00

I certify that the above account is correct and just and that payment therefor has not been received.

By (s) LEE CHONG.
Lee Chong, Manager.
CHUN YAU CHEE.

Paid 6/7/34. Lee Chong, Mr. With Thanks.

[103]

(Testimony of William E. Miles.)

(Reporter reads last question, marked *, page 84)

A. The item of 500 oysters, "500 Only Fresh Oysters".

Q. And whom did you question about that?

A. Cunningham, first.

Q. And did you question anyone else?

A. Just Cunningham at the time.

Q. I mean, later on did you question anyone else? [315]

A. Well, I questioned Lee Chong later on, several months later, after the investigation started at my instigation.

Q. Ever have any conversation with Mr. Mookini about this?

A. That was later on.

Q. Well, how much later on?

A. In the month of—in the latter part of—no, it was the early part of September, when this thing came to a head.

Q. What did he have to say with reference to that item?

A. I told him that Cunningham had told me that this item was for Flowers, and he told be that we had oyster stew, and referred to the menu for that particular date.

Q. Did you question any of the other items, Mr. Miles?

A. That was the only item that looked queer to me, for the reason that feeding the boys fresh oys-

(Testimony of William E. Miles.)

ters—although we had fresh oysters at the officers' table occasionally—but a large supply of 500 fresh oysters was a little bit—but when he mentioned the oyster stew I paid no more attention to it, I just let it go.

Q. Did you ever see, while you were there at the Conservation Camp, the original of that voucher?

A. This is the only voucher that was ever in my possession, and I don't remember of any other voucher.

Q. This appears to be a carbon copy? (showing document to the witness).

A. Yes.

Mr. ULRICH: Let me see that, please.

(Mr. Moore shows document to Mr. Ulrich)

Mr. MOORE: And you had similar vouchers to this from Lee Chong?

A. Yes.

Q. And the ones contained in the files at the Camp, were [316] they the original, or the copy?

A. Those was the ones contained in the files of the Camp.

Q. I mean, as a usual thing did you have the original or the copy out there?

A. Well, I didn't take particular notice; sometimes we had original, sometimes the copy; this particular voucher, however, was out of the camp files that I turned over to Mr. Lloyd when I made my report to him.

(Testimony of William E. Miles.)

(Mr. Moore shows documents to Mr. Ulrich)

The COURT: Mr. Moore, how much longer do you expect to take with the Director?

Mr. MOORE: Oh, it'll take easily half an hour, I imagine.

The COURT: Gentlemen of the jury, at this time we'll have a short recess; and remember the admonition heretofore given you.

(Recess—9:55 to 10:13 a. m.)

Mr. MOORE: Showing you a document dated September 1st, 1934, I call your attention to the initials at the bottom of that; whose initials are those?

A. I recognize that as Mr. John Cunningham's.

Mr. MOORE: At this time may it please the Court, we'll offer the document just identified by the witness as United States Exhibit "G" in evidence.

The COURT: Has opposing counsel seen it?

Mr. MOORE: Yes, Your Honor—you've seen it, Mr. Ulrich?

Mr. ULRICH: Yes, Your Honor, I have. (Mr. Ulrich again examines the document). Might as well let the whole thing go to the jury now.

The COURT. You are offering just one of those documents?

Mr. MOORE: I am offering one at a time; I'll offer them [317] in their sequence, Your Honor.

The COURT: Let the record show that it is admitted as "Exhibit G".

(Testimony of William E. Miles.)

Crim. 8518.
U. S. EXHIBIT "G".
Admitted.

P. O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market
Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., Sept. 1st, 1934

"C. C. C. Camp" Schofield Barracks Upperpost Oahu TH
Honolulu, T. H.

4	Only	Dressed Pigs 365#	@ $ .22	Per lb.	$ 80.30
100	lbs.	King Salmon	.165	" "	16.50
450	"	Strained Poi	.05	" "	22.50
10	"	Sml. Hot Pepper	.30	" "	3.00
5	"	Long " "	.30	" "	1.50
50	"	Spring Onions	.06	" "	3.00
300	"	Taro Top	.08	" "	24.00
300	"	Sweet Potatoes	.015	" "	4.50
50	"	Calif. Yam	.10	" "	5.00
125	"	Fresh Tomatoes	.08	" "	10.00

150	"	Fowl Chicken	.24	" "	36.00
100	Only	Fresh Cocoanuts	.08	" Pce.	8.00
200	Lbs.	" Mullets	.29	" lb.	58.00
10	"	Hawaiian Red Salt	.09	" "	.90
200	"	Fresh Pineapples	.025	" "	5.00
350	"	Water Melon	.06	" "	21.00
150	"	Pork Belly	.215	" "	32.25
150	"	Round Steak	.29	" "	43.50
3	Cases 150's	Oranges	4.75	" Cs.	14.25
1	"	Lemons	6.50	" "	6.50
150	lbs.	Cooking Bananas	.07	" lb.	10.50
300	Pieces	Opelu (29#)	.35	" "	10.15
25	"	Kukui Nuts	.08	" Pcs.	2.00
25	Rolls	Lemu	.08	" "	2.00
15	Quarts	Opehi	2.25	" Qt.	33.75
2	Bags	Hawaiian Salt	1.25	" Bag	2.50
6	Cases	Honey Dew Melon	2.50	" Cs.	15.00
300	lbs.	Pumpkin	.045	" lb.	13.50
10	"	Dried Mushroom	1.90	" "	19.00
15	Gallons	Mayonnaise	1.50	" Gl.	22.50
				Total	$526.60

Received the above articles
OK (s) J. E. C.

(Testimony of William E. Miles.)

Mr, MOORE: Showing you a document dated September 1st, directed to the "C. C. C. Camp"; is that one of these vouchers of Lee Chong?

A. Yes, it's the original of those.

Mr. MOORE: I offer this in evidence as United States Exhibit "H".

The COURT: Let it be admitted.

Crim. #8518.
U. S. EXHIBIT "H".
Admitted.

P .O. Box 1958
Telephone 5901

Cable & Radio Address
Leechongco.

Cor. Queen & Awa Streets, Aala Market
Dealer in
Fruits, Vegetables, Poultry, Meats, Groceries and Merchandise
Ship Supplies a Specialty

Honolulu, T. H., Sept. 1st, 1934

"C. C. Camp" Schofield Barracks Upperpost
Oahu, T. H.

365	lbs.	Dressed Pig	@ .22	Per lb.	$ 80.30
100	"	King Salmon	.165	" "	16.50
450	"	Strained Poi	.05	" "	22.50
10	"	Sml. Hot Pepper	.30	" "	3.00
5	"	Hot Long "	.30	" "	1.50
50	"	Spring Onions	.06	" "	3.00
300	"	Taro Top (Lau-lau)	.08	" "	24.00

300	"	Sweet Potatoes	.015	" "	4.50
25	"	Calif. Yam	.10	" "	2.50
125	"	Fresh Tomatoes	.08	" "	10.00
150	"	Stewing Chicken	.24	" "	36.00
100	Only	Fresh Cocoanuts	.08	" Pce.	8.00
200	lbs.	" Mullets	.29	" lb.	58.00
10	"	Hawaiian Red Salt	.09	" "	.90
200	"	Fresh Pineapples	.025	" "	5.00
350	"	Water Melon	.06	" "	21.00
150	"	Pork Belly	.215	" "	32.25
150	"	Round Steak	.29	" "	43.50
3	Cases	150's Oranges	4.75	" Case	14.25
1	"	Lemons	6.50	" "	6.50
150	lbs.	Cooking Bananas	.07	" lb.	10.50
300	Pces.	Opelu Fish (29#)	.35	" "	10.15
25	"	Kukui Nuts	.08	" Pce.	2.00
25	Rolls	Lemu	.08	" "	2.00
15	Qts.	Opehi	2.25	" Qt.	33.75
2	Bags	Hawaiian Salt	1.25	" Bag	2.50
				Total	$454.10

(Testimony of William E. Miles.)

Mr. ULRICH: Just designate what that is as it goes in.

Mr. MOORE: This is voucher dated September 1st, 1934, in the sum of $454.10. The one just prior to that, Exhibit "G", is a similar voucher under the same date, for $526.60.

Q.—Now showing you document marked "Statement", dated September 30, 1934; do you know the signature that appears on the bottom of that document?

A. That's Mr. Lee Chong's signature.

Mr. MOORE: We'll offer in evidence at this time——

Mr. ULRICH: Is that the document you just showed me?

Mr. MOORE: Yes (shows document to Mr. Ulrich). We will offer in evidence a document which purports to be a statement of Lee Chong Company, dated September 30, 1934, in the sum of $857.78.

Mr. ULRICH: No objection.

The COURT: It will be admitted.

(Marked—"United States Exhibit I")

(Testimony of William E. Miles.)

Crim. #8518.
U. S. EXHIBIT "I".
Admitted.

STATEMENT.

P. O. Box 1958 Telephone 5901

Honolulu, T. H., Sept. 30, 1934.

LEE CHONG COMPANY
Cor. Queen & Awa Streets, Aala Market
Groceries

"C. C. C. Camp" Schofield Barracks Upperpost
Oahu TH

Sept.	1, 1934	Mdse.	$ 9.00	
"	1 "	"	47.73	454.10
"	1 "	"	454.10	72.50
"	3 "	"	49.30	9.00
"	4 "	"	30.75	47.73
"	8 "	"	63.85	49.30
"	11 "	"	37.90	30.75
"	14 "	"	49.00	63.85
"	18 "	"	40.20	37.90
"	19 "	"	1.10	49.00
"	22 "	"	53.80	40.20
"	25 "	"	21.05	1.10
				53.80
			$857.78	21.05
				930.28s
				72.50-
				857.78

I certify that the above account is correct and just and that payment therefor has not been received.

By (s) LEE CHONG,
Manager.

[106]

(Testimony of William E. Miles:)

Mr. MOORE. Showing you a document dated September 1st, 1934; do you know whose signature appears on the bottom of that?

A. That's Mr. Lee Chong's. [318]

Mr. MOORE: At this time we'll offer in evidence a document which purports to be a voucher, under date of September 1st, 1934, by the Lee Chong Company, against the "C. C. Camp" Canteen, for $72.50.

The COURT: It will be admitted.

(Marked—"United States Exhibit J")

Crim. #8518.

U. S. EXHIBIT "J".

Admitted.

P. O. Box 1958 Telephone 5901

Honolulu, T. H. Sept. 1st, 1934.

LEE CHONG COMPANY

Cor. Queen & Awa Street, Aala Market

Groceries

"C. C. C. CAMP" CANTEEN

Schofield Barracks Upperpost, Oahu TH

The following articles in good order and condition.

Note: Please see that the articles are in good order and sufficient before signing this receipt.

(Testimony of William E. Miles.)

Keawe Wood	$ 6.00
Chicken Wire	.50
Empty Bags	1.30
Rent for Chairs	2.00
Paper Plates, Napkins, Cups Bowls and Spoons	37.80
Cigars and Cigarettes	10.40
Hawaiian Pudding	8.00
Flower Leis	6.50
	$72.50

I certify that the above account is correct and just and that payment therefor has not been received.

By (s) LEE CHONG [107]

Mr. MOORE: Showing you a document dated October 12th, 1934, calling your attention to the signature just over the word "Manager" appearing at the bottom of the typewritten portion of this document; do you know whose signature that is?

A. Mr. Lee Chong.

Q. Calling your attention to the signature appearing under the words written in ink "Certified a true Original"?

A. Robert K. Mookini.

Mr. MOORE: At this time we will offer in evidence a purported receipt dated October 12, 1934, for $820.13. (Showing the document to Mr. Ulrich).

The COURT: The document will be admitted.

(Marked—"United States Exhibit K")

(Testimony of William E. Miles.)

Crim. #8518

U. S. EXHIBIT "K".

Admitted.

Honolulu, T. H.

October 12, 1934.

Received from the CCC Camp, Camp Directors Fund, Schofield, T. H. the sum of EIGHT HUNDRED TWENTY AND 13/100 DOLLARS as partial payment of Account Rendered of $930.28 (Nine Hundred Thirty and 28/100 Dollars) leaving a balance due and unpaid in the sum of One Hundred Ten and 15/100 Dollars ($110.15), for September, 1934.

LEE CHONG CO.

Per (s) LEE CHONG

Manager.

$820.13

Certified a true original

ROBERT K. MOOKINI

Q. M. CCC Camp [108]

Mr. MOORE: Mr. Miles, showing you United States Exhibit "G", have you ever seen that document before?

A. It was never in my possession—just a minute, I'd like to look at this again—yes, I saw this document.

Q. Where did you first see it?

(Testimony of William E. Miles.)

A. It was sent to the Camp by Mr. Lee Chong; through the mail, I think it was; either it was delivered in person, or by mail.

Q. Anyway, it got to the Camp?

A. It got to the Camp.

Q. What did you do with it, if anything? [319]

A. With this?

Q. Yes.

A. I believe this is the voucher which I paid.

Q. Around September 1st, 1934, was there any unusual activity at the Schofield Camp of the Civilian Conservation Corps?

A. Around September 1st?

Q. Yes.

A. Yes. We were getting ready for the closing of our first six months period of the E. C. W.—Emergency Conservation Works.

Q. That's the immediate superior of the C. C. C.?

A. Yes; for the period of the enrollment; and *there several* boys—around 40 and some odd, leaving Camp, and we decided to give them a farewell luau.

Q. Did you have a luau?

A. We did.

Q. Now, to have this luau did you have to obtain any goods that were not food to put on the luau?

A. Oh, no, not out of the Government funds.

(Testimony of William E. Miles.)

Q. Showing the witness, in addition to Exhibit "G", showing Exhibit "H", which is the bill of September 1st, Mr. Ulrich, for $454.10; also showing him Exhibit "J", which is the voucher for $72.50, the small one——

A. May I correct this now; I got to the statement——

Q. Also showing him United States Exhibit "I", which is a statement in the sum of $857.78; the small one, Mr. Ulrich; (showing document to Mr. Ulrich); and also showing the witness United States Exhibit "K", which is the receipt for $820.13. Now, with those documents in front of you, Mr. Miles, can you explain what they are? You'll have to do it [320] slowly, if you can explain them, so that counsel will understand what we're talking about.

A. Yes. Before commencing, I want to make a little correction on the previous testimony made by me in regard to Exhibit "G".

Q. That is the voucher for $526.60?

A. Yes. That claim was the first invoice sent to me by the Lee Chong Company, signed by Mr. Cunningham, that came into the office, and——

Mr. MOORE: Just a moment, now. (Hands a document to jurors).

A. (continued): for the September 1st delivery. Later, during the month, when we were getting ready to pay our bills, about October, I took it upon

(Testimony of William E. Miles.)

myself to check these September accounts, because I had the general running then of the mess at the Camp, and scrutinized these purchases a little bit more carefully than I had been doing in the previous part. I noticed there were certain items on this bill that were not listed; for instance, like purchases for paper plates, napkins, and cups, and bowls, and spoons. I got in touch with Mr. Lee Chong; I was in town; and I found he had gone to Schofield Barracks; and I 'phoned out to Schofield Barracks and I told him I would be in town; left word with Lee Chong there that I would be in town waiting for him.

Q. Did you see Lee Chong?

A. Yes.

Q. Let's have the conversation, Mr. Miles.

A. I saw Mr. Lee Chong and his clerk in the office. I told Mr. Lee Chong, "How did he fix this bill up; where was the items for the other, the keawe wood and chicken wire and things we had purchased for that luau"; and he said, [321] "Well, it's all in the bill"; but he called his clerk, and the clerk pointed out to me what items there were on this original bill that had been changed to other articles to match up the amount that was supposed to have been these papers napkins and cups and keawe wood, amounting to $72.50.

Q. These other items, are those the items that appear on United States Exhibit "J"?

A. Yes, it does;——

(Testimony of William E. Miles.)

Mr. MOORE: Just a moment. (Shows document to jurors).

Q. Now, during this conversation, or when this clerk, you say, was checking these items, was Mr. Lee Chong present?

A. He was there with the clerk and myself.

Q. After the clerk checked those items, what happened, if anything?

A. Well, it all turned out to be these items on Exhibit "J", amounting to $72.50. I told Lee Chong, "Well, Lee Chong, these things are not chargeable to the mess fund, and", I says, "it cannot be charged to the mess fund, and you'll have to charge this to the C. C. C. Camp Canteen"—a little store we had down there—"and," I says, "you'll get paid from this, but," I says, "you change this bill and correct it so that the actual amounts which is permissible to the mess account, amounting to $454.10, I'll pay you on that."

Q. Did he change it?

A. He changed it.

Q. Have you the changed voucher there?

A. I have it in my hand; it's Exhibit "H".

(Mr. Moore shows document to the jurors).

Q. Did you pay either one of these vouchers, that is, the Exhibit "H" for $454.10, or the Exhibit "G", for $526.60?

A. I paid them on Exhibit "H", the corrected invoice for [322] $454.10, on his final statement of September 30th, total amount $857.78, less $37.65

for charges irregularly made on the May claims here, previously made, totaling $820.13, that was the check I paid him, reimbursing the Government.

Q. Showing you United States Exhibit "A", and calling your attention to check No. 51, under date of October 10th, 1934; has that check any reference to United States Exhibit "H" which is the bill for $454.10?

A. Yes, that amount of $454.10 is included in that $820.13; the total charge of the final statement of $857.78 is noted in a memorandum on the stub here: "$857.78 September bill (of Lee Chong Company), deduction made, improper charge of May 12/34, $37.65, balance $820.13".

Q. This notation that you've just read, was that made at the time this check was drawn?

A. Yes.

Q. By yourself?

A. Yes sir.

Q. And kept as a record in this check book?

A. Yes sir.

(Mr. Moore shows notation to the jurors)

Q. Did you receive a receipt from Mr. Lee Chong?

A. I did.

Q. Which one is that; is that here?

A. No, that must be——

Q. Do you know what that is (indicating)?

A. This is it, yes. This receipt was not turned over to me; it was turned over to my successor, Mr.

(Testimony of William E. Miles.)

Bob Yates, because the check was paid on the day I turned over the property to my successor, Mr. Yates, down there.

Q. And, Mr. Miles, how did you arrive at this figure of $37.65? [323]

A. That $37.65 includes items that were claimed to have been fictitiously charged against the C. C. C. Camp as of May 12th, including the 500 oysters and a few other items, and it's covered in my report to Mr. Lloyd. I can't remember just exactly what the items are, now, but I have a report in.

Q. Showing you United States Exhibit "E"; look that over and tell us if any particular articles in there that are covered by this $37.65?

A. Well, this has been so lumped up, there are some regular goods in there——

Q. I am asking you if you can tell us from that thing itself, not what you think or anything else.

A. No, I can't very well take it from here.

Q. Did you make a memorandum of those articles of May 12th at any time?

A. I did.

Q. If you saw that memorandum could you refresh your memory from that?

A. Yes, I could; it was made to Mr. Lloyd.

Mr. ULRICH: If Your Honor please, I have permitted all sorts of immaterial, irrelevant and incompetent evidence to go in here; I want the jury to have everything; I want the jury now to have the benefit of this man's honest recollection as he

(Testimony of William E. Miles.)

sits on the witness stand; but when it comes to the point when we're proceeding to take his own memoranda for the purpose of refreshing his recollection when it does not appear his own memory has been exhausted, I object. I do object to this witness volunteering as to any former written matter which is not proper evidence in the case, or refreshing [324] his recollection from any such documents as counsel is now about to show him.

The COURT: Whether a memorandum would be admissible or not would depend upon when and why it was made.

Mr. MOORE: We are not seeking, Your Honor, at all to introduce any memorandum; all we're seeking to do is refresh his recollection. As I understand it, a memorandum used to refresh his recollection is not evidence. The only purpose of the memorandum is to refresh his recollection.

Mr. ULRICH: (Argument).

The COURT: As the Court understands the statement of the evidence, this witness has testified that he made a memorandum on a check stub whereby is stated there was $37.65, if I remember correctly, of items that were erroneously included in a former invoice, that they are together at this time, that he cannot from his examination of a certain exhibit tell just what those items were but that he did make a memorandum of what they were.

Mr. MOORE: Have you any individual recollection at this time as to any of the items which went to make up this $37.65?

A. Yes.

(Testimony of William E. Miles.)

Q. Well, let us have what you know of those items.

A. That was the item of 500 oysters, for seventeen dollars and some odd cents; then there were items of candies, and nuts, and raisins, which according to regulations is permissible to be purchased out of the ration fund or the mess fund of the organization, but I checked that out and left just exactly the items which were not supposed to be [325] charged to the mess fund, and that totaled $37.00. What these particular amounts are I have no recollection, but I know that I admitted the items of raisins and nuts and candies, and so on; but the items that were supposed to be of 500 oysters was supposed to have been for flowers, $17.00, that's one item, then there was an item supposed to have been for two boxes of apples, it was raised to six for the purpose of balancing the total amount of the bill so that it would equal the original claim; what that amounted to I didn't know. Then there was several other items, like the 400 pounds of pumpkin, and little articles were deducted from that to make up this $37.00 which was actually an improper claim against the government fund.

The COURT: Were those items called to the attention of the defendant Lee Chong at the time?

A. Yes sir. It was an agreement between he and I and his man at the office, Your Honor, that these be deducted from his next months bill. And all of

(Testimony of William E. Miles.)

that was reported in my final report to Mr. Lloyd, who was the administrator and purchasing and contracting agent of the E. C. W. in Honolulu.

Mr. MOORE: Do you recall, Mr. Miles, the occasion when this bill of $454.10, which is United States Exhibit "H", was paid?

A. In October, I think, the 12th——

Q. I am asking you for the occasion; I don't care about the date. Do you recall the occasion?

A. Yes.

Q. Who was present?

A. When the bill was paid?

Q. Yes. [326]

A. Before that I went to Mr. Lee Chong to pay him the bill.

Q. I mean, when it was paid.

A. It was out at Schofield Barracks; Mr. Mookini, Mr. Lee Chong, Mr. McGregor, Mr. Yates, and myself—Mr. Robert Yates, the new director there.

Q. Did you have any trouble about it?

A. Yes. Mr. Lee Chong refused to accept the check, under advice of someone, the check in payment, and claimed that he had no guaranty of the payment of the $72.50 nor the $37.65 which he claimed was a just claim against the government, being that he had furnished them some goods down there, and that I was leaving the Camp. So I told him, "Well, as far as I'm concerned, the Canteen Fund will take care of this; if you can come out to the Camp I'll take it up with Mr. Yates and that

(Testimony of William E. Miles.)

can be easily straightened out." We made an appointment to go out together, but he went out ahead with Mr. McGregor, and he didn't, however, arrive at the Camp until after I was already there. While I was packing up my belongings—I had some checking up to do with Mr. Yates later—Mr. McGregor and Mr. Lee Chong, joining with Mr. Mookini, went to headquarters. When I arrived there, Mr. Mookini was sitting at his typewriter making out this receipt, and Mr. McGregor——

Mr. MOORE: Indicating United States Exhibit "K"?

A. Yes, Exhibit "K". Mr. McGregor, on behalf of Mr. Lee Chong who was present, dictating the wording of the receipt. I was alongside of Mr. Yates, making my final clearance and check of the property and money of the Camp that I was turning over to him. [327]

Q. All right. Mookini was, as I understand, there at the Camp practically all the time you were?

A. During the period of our service?

Q. Yes.

A. Yes.

Mr. MOORE: At this time, may it please the Court, it's five minutes to eleven; I would suggest a recess, not particularly for the recess' sake but, as I have just informed Mr. Ulrich, I intend to go into another line of examination and expect to make an offer of proof.

The COURT: Before taking a recess, I would like to have one matter cleared up. The witness has

(Testimony of William E. Miles.)

testified to a man by the name of McGregor; who is McGregor connected with—Lee Chong Company, or the C. C. C. Camp; who is he, and what is his connection?

A. He is not connected with the C. C. C. Camp, Your Honor, but he is a visitor or friend of Mr. Lee Chong; he was there at Lee Chong's store at the time I went to pay the bill, and he was out at Schofield Barracks also.

The COURT: Was he employed there?

A. That I could not say; he was advising Mr. Lee Chong, in my presence, as to what his rights were in claiming——

The COURT: Was Mr. Lee Chong there?

A. Yes sir.

The COURT: Were these statements by Mr. McGregor made in his presence and hearing?

A. Yes sir.

The COURT: All of them?

A. Yes sir.

The COURT: The Court will take a short recess at this time, gentlemen of the jury. Be back in the jury box when called.

Mr. MOORE: I think I ought to make my offer of proof in the absence of the jury, and then the jury be excused. [328]

The COURT: Yes; then the jury will be excused until called.

(The jury retire from courtroom).

Mr. MOORE: May it please the Court, the United States Government now proposes to prove

(Testimony of William E. Miles.)

by this witness that out there at the Schofield camp Mr. Mookini frequently used intoxicating liquor, and on numerous occasions in excess amounts of intoxicating liquor; such was the case both on September 1st and upon May 12th. The purpose of the offer of this evidence by this witness is by evidence that is to be connected up with evidence that will follow, to the effect that on the May 12th delivery, which is covered by one of the vouchers here in evidence, there was delivered to the Civilian Conservation Corps by Lee Chong, on his delivery truck, and in his presence——

Mr. ULRICH: Whose presence?

Mr. MOORE: Lee Chong's presence, a box containing 3 bottles of Gin and 3 bottles of Whiskey; that that box was delivered from the mess hall to Bob Mookini then, and that the item $17.50 which appears upon the May 12th voucher is the item covering the liquor; therefore our offer as to the man's use of intoxicating liquor is connected up with what the liquor is for, we feel is relevant and material.

Mr. ULRICH: If Your Honor please, might just as well offer to prove that the man has meals regularly by way of showing that there were some other items of food that were included in these bills; might as well show that he had an automobile, to prove that there was gasoline. All that this evidence is and all it would amount to, even if it were received, would be evidence to the effect that Mr. Mookini, if the evidence were true, had used liquor;

(Testimony of William E. Miles.)

it doesn't begin [329] to prove where he got the liquor, or how he got it, or anything of the kind at all. I submit it would be highly prejudicial in considering the effect the evidence has in and of itself under the guise and truth of evidence proving a fact of delivery of liquor to Mr. Mookini. As I say, you might just as well prove that he wore clothes, or that he did any other things, by way of showing that they were delivered by Mr. Lee Chong. We don't believe that there will be a particle of credible evidence in this record—I say it in all sincerity—when this case closes, showing that there was any liquor delivered by Mr. Lee Chong to that Conservation Camp; and we don't propose, unless we're ruled against by the Court, to have it argued in the case by remote inference through any such evidence as is now offered. I submit it's entirely too light as probative of the delivery of liquor by Mr. Lee Chong to the Camp and to Mr. Mookini, and that it carries such a prejudicial effect in other ways that in view of its remoteness it clearly should not be received by the Court.

The COURT: It is the opinion of the Court that the government is entitled to show if it can that liquor was delivered to this camp by the defendant Lee Sau Chong and charged for in his bills under some other item; but as to whether or not the defendant Mookini or somebody else drank liquor, the Court holds is not competent.

Mr. MOORE: May we have a recess now, Your Honor.

(Testimony of William E. Miles.)

The COURT: I understood we were at recess; that is, the jury was excused.

Mr. MOORE: Yes, the jury was excused.

The COURT: Do you want a recess at this time? [330]

Mr. MOORE: Yes, for a moment.

The COURT: The Court will take a short recess before calling the jury.

(Recess—11:03 to 11:14 a. m.)

Mr. MOORE: Mr. Miles, all this evidence that you've testified to here happened here in Honolulu, City and County of Honolulu, Territory of Hawaii?

A. Yes.

Q. On this Island?

A. On this Island.

Mr. MOORE: You may cross-examine.

Cross-Examination.

By Barry S. Ulrich, Esq.

Q. Mr. Miles, before going into the details of these various transactions that you've testified to, let me just get your position in the Camp. As I understand it, you were what they call the "Camp Director", is that right?

A. Yes, I was.

Q. You were appointed by whom?

A. Well, the recommendation is made through Mr. Lloyd, and appointed from Washington, D. C.

Q. And Mr. Mookini was the Recreation Officer to begin with, is that right?

(Testimony of William E. Miles.)

A. He was known as the Recreation Officer.

Q. You succeeded a Mr. or Major Mahaffy out there?

A. Correct.

Q. When, did you say?

A. April 29th, I think it was. (Witness reaches for memorandum book).

Q. Do you have to refresh your recollection? [331]

A. Well, it was in April, anyway, April 16th, something like that—(witness consults memorandum)—yes, April 16th.

Q. Have you got a memorandum of some of these dates?

A. No, just that, the date of my appointment.

Q. Appointed April 16th?

A. Yes, April 16th, 1934.

Q. When was Mr. Mookini appointed as Recreation Officer out there?

A. He was appointed at the same time as Major Mahaffy and the rest of them, in the early part of January some time.

Q. In other words, he had been there before you came?

A. I joined them January 29th.

Q. Mr. Mookini preceded you as a member of the force out there?

A. According to the payroll, yes.

Q. Well, actually was he there?

A. Yes, actually he was there before me, about two weeks.

(Testimony of William E. Miles.)

Q. Later on you designated that he just acted as, did you say, mess——

A. Mess officer; he was designated by agreement of the officers in the Camp at our general daily council.

Q. That was the designation that you gave him?

A. Mr. Mahaffy, the Camp Director.

Q. Mr. Mahaffy gave him the designation?

A. Yes.

Q. Was his position with the United States changed in any way; did he get any more money for that work?

A. Not at all; it just increased the duties and responsibilities of the office.

Q. In other words, he was assigned to work with the mess?

A. That was the prerogative of the camp director.

Q. And his duties there, as I understood you to say, were [332] to make purchases of goods and materials for the mess, is that right?

A. Making purchases, drawing up the menus.

Q. Now, let's just understand where we stand with reference to this edible and non-edible proposition that's figured so largely in your testimony. As I understood you to testify, you were not permitted to spend out of the mess fund moneys except for foods, is that right?

A. Correct.

Q. Suppose it became necessary from time to time, or did it ever become necessary to get things

(Testimony of William E. Miles.)

for the mess that were not edibles, did that occasion ever arise?

A. Well, that comes out of Camp Equipment; that's purchased through Mr. Lloyd's office.

Q. Well, suppose you ran out of napkins, or if you used napkins or plates or any other thing that was used in connection with the mess, what did you do about it?

A. Crockery?

Q. Anything at all that was not exactly food and yet was used on the table.

A. That was requisitioned from Mr. Lloyd; he makes the purchases through his department.

Q. You would make requisition through Mr. Lloyd?

A. Yes.

Q. I see.

A. Just a minute, Mr. Ulrich. On the question of breakage, the usual military procedure is followed on that; any breakage of crockery is charged up against the one who broke the crockery, against any of the cooks or the boys or the [333] "Kitchen police", whoever it is, and it's collected from them, and the purchase is made from the "Q. M."—Quartermaster—through a regular form of requisition.

Q. In other words, if any of the men broke any dishes they would have to pay for them?

A. Yes.

Q. I believe you testified to the effect that there were various merchants in town that the Camp did

(Testimony of William E. Miles.)

business with; principally you've named Chun Hoon and Lee Chong, is that right?

A. Yes.

Q. You said that the business was carried on with Chun Hoon rather largely until Mr. Mookini became the mess officer there, and after that the business largely diverted?

A. It was around that period; it kept up until about July or August; I remember we had a conference on that.

Mr. MOORE: May it please the Court, I think that Mr. Ulrich is laboring under a misapprehension of the evidence. The evidence is that he purchased from Chun Hoon, who runs the vegetable market as a part of the Army Commissary at Schofield Barracks, and not Chun Hoon down town.

Mr. ULRICH: Well, I don't remember where he was operating, I know it was Chun Hoon.

Mr. MOORE: It was the Commissary at Schofield which Chun Hoon operated as a concession.

The COURT: Well, there seems to be a difference of opinion between the witness and opposing counsel as to Chun Hoon's status before the Court, but I'm not interested in that. It's your understanding, however, that he was part of the Commissary out there? [334]

A. Yes.

Q. He did not run an independent concession?

A. Not at all; he had the special privilege and exclusive concession, with the sanction of the Ha-

(Testimony of William E. Miles.)

waiian Department, either to operate in Schofield Barracks or in town.

Q. Well, he operated as a store, he sold his merchandise, didn't he, just as a matter of having a place where he could sell it at Schofield Barracks?

A. Well, he has his big store in town, but he had all vegetables and fruits and things of that kind at Schofield Barracks, he had a place of business there.

Q. The long and short of it is that you bought some of your foodstuffs from Chun Hoon, and others from Lee Chong?

A. Correct.

Q. Then, I believe you said, that Mr. Lee Chong's part or share of the business increased materially toward the end of the time you were dealing with him?

A. It did.

Q. Did you ever have occasion to examine the difference in prices that were being offered to you?

A. As I said, along about July I noticed that Mr. Lee Chong's claim was increasing. I had a conference of our officers; Mr. Mookini, I had Mr. Cunningham there, and I had my camp quartermaster Mr. Gibson, and Mr. Colman, at our regular officers' meeting at 11 o'clock each day, and I brought up the subject of this increase of purchases. Mr. Cunningham spoke up and said that the reason why that they were purchasing from Mr. Lee Chong was that Mr. Lee Chong was furnishing better quality of foodstuffs and his prices were better; and

(Testimony of William E. Miles.)

Mr. Mookini corroborated that. "Well," [335] I says, "we'll have to be doing business with the Army people here," I says, "they have been good to us and," I says, "we should do business with them, and if we can't get what we want from them then we'll have to look outside." I took Mr. Cunningham with me the following two or three days after that to Chun Hoon's headquarters. I took Mr. Cunningham with me because he was the one that made most of the complaints and he is the chief cook in the Camp. I took him to Mr. Chun Hoon and I told his this: "Mr. Chun Hoon, we've had a number of complaints about your goods and food that are being delivered to the C. C. C. Camp, and we don't get the service. Mr. Cunningham is here and he wants to know if we can't get better service from you; if we can get better service we would like to do business with you." Mr. Chun Hoon said he would look into it and that he promised to give better service. That was all. I came to town, I remember perfectly well Mr. Cunningham coming to town with me; but the purchases continued. Mr. Chun Hoon——

Q. Mr. Miles, are you trying to suggest that there was something reprehensible about giving Mr. Lee Chong the business?

A. Not at all.

Q. Well, what's all this about, then?

A. I am trying to answer your question as to how——

(Testimony of William E. Miles.)

Q. My question merely was this: Did you have occasion to compare the relative prices that were being offered as between Chun Hoon and the Lee Chong Company?

A. Yes, I did. [336]

Q. Was there any difference; was there any possibility of getting a better deal from Mr. Lee Chong than from Mr. Chun Hoon?

A. There was very little.

Q. Wouldn't even a small difference justify the giving of business in one place or another?

A. What's that question again?

Q. Wouldn't even a small difference justify dealing in one place rather than another; assuming you get as good merchandise or better merchandise, wouldn't it be advisable to do that thing?

A. Oh yes.

Q. I understood from your testimony as elicited by your counsel that there was something bad or wrong because Mr. Lee Chong was given more of this business than Mr. Chun Hoon?

A. No, not at all.

Q. All right, there's that phase of it. Now then, Mr. Miles, we come down to a time when you were about to give a Mothers' Day—If Your Honor please, counsel has suggested that Your Honor has suggested that the Court would like to take a recess as near 11:30 as possible.

The COURT: I would like very much to do that.

Mr. ULRICH: This would be a very convenient

(Testimony of William E. Miles.)

time for me to stop my line of cross-examination to recess at this time.

The COURT: Gentlemen of the jury, remember the admonition heretofore given you about discussing this case with anybody or among yourselves. The Court will now take a recess in this case until 9:00 o'clock tomorrow morning; be in your places promptly at that hour.

(Adjourned—11:27 a. m.) [337]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Wednesday, May 15th, 1935; the defendants Robert K. Mookini and Lee Sau Chong being present with their respective counsel; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore;

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

The COURT: Do counsel for the defendants so stipulate?

Mr. ULRICH: We will so stipulate.

The COURT: Let the record show that counsel stipulate that the jury are all present. At adjournment yesterday you were in the midst of your cross-examination, Mr. Ulrich?

(Testimony of William E. Miles.)

Mr. ULRICH: Yes, Your Honor.

The COURT: You may proceed [338]

WILLIAM E. MILES under continued cross examination by Barry S. Ulrich, Esq., testified further as follows:

Q. Mr. Miles, as I understood your testimony on your direct examination, it was that, so far as Mr. Lee Chong was concerned, the first time that you had seen him or had any contact with him was on the day before Mothers' Day, when he appeared out there with a lot of groceries, is that right?

A. No, that was not it; I didn't testify to that effect.

Q. Beg pardon?

A. I didn't testify to that.

Q. That was the impression I got. When was the first time you saw Mr. Lee Chong or knew him in connection with this business out there?

A. Well, he came into the Camp to solicit business, calling on Mr. Cunningham some time after we were in camp, when I was still the assistant camp director; and that's when I first met Lee Chong.

Q. Do you remember an occasion when Lee Chong was out there, and there were you and Major Mahaffy and Mr. Mookini, when the matter of Mr. Lee Chong doing business for the Camp was discussed among you there?

A. Yes; that's when I was assistant camp director, and he came down there to solicit business.

(Testimony of William E. Miles.)

Q. And do you recall it being decided among you there that he was to be at least tried out, given some orders, or something of that kind?

A. Correct.

Q. You approved of that at the time, did you not?

A. Well, I had no voice in the matter, that's all; I was [339] assistant camp director at the time; all the officers of the Camp approved of it.

Q. Major Mahaffy was still in charge, and he approved of it?

A. Yes.

Q. So far as the Mothers' Day order was concerned, do I understand your testimony to be that you knew nothing about that Mothers' Day order or the things that were to go in the Mothers' Day order after it had been placed?

A. I didn't testify that way.

Q. Did you know about it before?

A. Yes.

Q. Did you go over it with any other people at the Camp before the order was placed?

A. We discussed the main menu, yes, that we were to have a turkey dinner, I think it was, or fried chicken, or something of that sort.

Q. Now do I understand your testimony, then, to be that, so far as anything on the list of things to be ordered was concerned which was not strictly edible, that is, paper plates or napkins or anything like that, you had no idea that anything of that kind was being ordered, in advance?

A. No sir.

(Testimony of William E. Miles.)

Q. Didn't know it?

A. No sir.

Q. It was quite a surprise when you came to the dinner that Mothers' Day and found paper napkins and plates at the Mothers' Day dinner, is that right?

A. Well, it was no surprise to me.

Q. It must have been quite a shocking surprise, because you said you knew nothing about it and were under the impression it was improper to order such things?

A. I didn't know it was being ordered and charged to the mess, at all. [340]

Q. You didn't know it was being ordered?

A. No.

Q. Did you think somebody was making a present of that sort of thing to the Government?

A. That I don't know.

Q. You were in charge of the Camp, weren't you?

A. I was in charge, yes.

Q. Wasn't it your business to see what was going on there so far as purchases for the mess and other supplies for the Camp?

A. Correct, it was.

Q. What investigation did you thereupon make, upon finding out that these paper plates and napkins were there, as to how they were being charged?

A. I didn't make no investigation of that.

Q. What did you think was going on; did you think somebody was trying to charge something

(Testimony of William E. Miles.)

against the mess that shouldn't be charged against the mess?

A. No, because the officer in charge of the mess was placed there on account of his knowledge of the regulations governing the purchasing of supplies and charging the Government, because he was supposed to have been a reserve officer, quartermaster.

Q. He was there, all right, but you were there also, and you were over him, weren't you?

A. I was, yes.

Q. As I understand it, this day before Mothers' Day, when those groceries came out there Mr. Lee Chong delivered them himself, I believe you said, is that right—you were there?

A. I was in the Camp, yes. [341]

Q. You were there when the load come in, is that right?

A. I believe I was, yes.

Q. Don't you know whether you were or not?

A. Well, I remember talking to him on the opposite side, but I wasn't there in the mess hall or the kitchen when the wagon arrived.

Q. In other words, you didn't see when the things were unloaded?

A. No sir, I didn't.

Q. You talked to Mr. Lee Chong there, did you?

A. I did.

Q. Who else was there?

(Testimony of William E. Miles.)

A. Mr. Cunningham was there for a few minutes.

Q. Mr. Mookini there?

A. No sir.

Q. Mr. Mookini wasn't there. Well, who performed the function of checking over the goods as they came in, to see that they were all properly delivered?

A. I don't know.

Q. You don't know?

A. No, I don't know.

Q. Even now you don't know?

A. Well, Cunningham signed, according to the invoice there; Cunningham receipted for it; whether he checked it or not, I don't know, I can't swear to that.

Q. He was the one who signed for it, signing to indicate that it had been delivered, wasn't he?

A. Yes.

Q. That's something you looked up later, is that the idea?

A. Yes.

Q. As I understand your further testimony, you didn't [342] investigate this matter of the paper plates and napkins and that sort of thing, oysters, until a considerably later time, is that right?

A. There was no necessity of investigating.

Q. And you didn't investigate?

A. I did not.

Q. Until some time in September, I think you said, is that right?

A. It was in the latter part of August.

(Testimony of William E. Miles.)

Q. Well, you remember an investigation that was started down in the office of Mr. Lloyd along about the first of September some time?

A. That was after I had placed the matter before Mr. Lloyd.

Q. Yes, it was after you had placed some other matters before Mr. Lloyd; we'll take that up in just a moment. Was it at that time, or before that time, that you started to investigate so far as this May 12th bill was concerned; when was it?

A. That was in the latter part of August.

Q. What was it that happened in the latter part of August to lead you to investigate this particular bill?

A. Mr. Cunningham came to me and told me, he says, "Captain, that 500 oysters item which you talked so much about and questioned so much about," he says, "I want to tell you it was never delivered," he says, "you were right, those never came in to the Camp." Then I says, "What do you mean, Johnny?" He says, "That was booze that was ordered by Mookini that was brought in to the Camp."

Q. I see; now we're getting down to it. In August of 1934 [343] Mr. Cunningham came to you and told you that the item of oysters had never come in to Camp at all?

A. Had never come in to Camp.

Q. And that it had been booze?

A. Yes, booze.

(Testimony of William E. Miles.)

Q. Whereupon you started the investigation, is that right?

A. Yes, I did.

Q. And you got hold of Mookini and of Lee Chong, did you?

A. Yes.

Q. You were very much surprised, of course, to learn that anything but oysters had been delivered, is that right?

A. Naturally enough.

Q. You had been suspicious of this oysters item for some time, I believe you said, didn't you?

A. I was.

Q. It was your impression that there had been no oysters at that dinner, is that right?

A. Well, when I questioned the first item when this item came I was told it was used for oyster stew.

Q. You testified on your direct examination that someone said that the oysters item represented flowers, did you?

A. Yes; Cunningham, when I asked him about it, he said it was flowers.

Q. Cunningham, when you first asked him, said it was flowers?

A. Yes.

Q. Later on?

A. Later on, when Mr. Mookini came back; that was in July when he was in town—no, that wasn't in July, that was the same month, in May, that's

(Testimony of William E. Miles.)

right, Mookini came to my desk and he says to me, he says, "Captain, this is not for [344] flowers at all, it was for oyster stew; John is all wet", something to that effect; and I took his word.

Q. When was this, now?

A. This was at the end of May or the first week in June, when we were getting ready to pay off our bills.

Q. And before the bills were paid, is that right?

A. Yes.

Q. Before the bills were paid you asked Mr. Cunningham what this was, and he said it was flowers?

A. Yes.

Q. And Mookini said it was oysters?

A. Oyster stew.

Q. Then later on, considerably later on and some time in July, Cunningham came in and said no, that it hadn't even been flowers, it had been booze, is that right?

A. Yes.

Q. Now, you knew that there were flowers out there, didn't you?

A. Sure.

Q. Where did you think those came from?

A. I don't know, until afterwards I found out; we discussed the item of flowers.

Q. When?

A. When the preparations was being made for the Mothers' Day; Mr. Mookini talked about it and we discussed the matter of flowers.

(Testimony of William E. Miles.)

Q. When the preparations were being made for the Mothers' Day?

A. Yes.

Q. What was said about flowers at that time?

A. Well, about having red and white flowers.

Q. How were they going to be paid for? [345]

A. You can pay it out of the Canteen Fund.

Q. Was that what you said at the time, "pay it out of the Canteen Fund"?

A. The mess officer knows about those things.

Q. Who is running the show out there—the mess officer, or you?

A. I am commanding officer, yes.

Q. Did you say anything about how the flowers were to be charged?

A. No, it was not necessary.

Q. As a matter of fact, don't you know you said something about it, and that you were the one who arranged this whole thing?

A. I did not.

Q. Didn't you direct that those flowers be purchased, and that they be listed as "edibles"?

A. No, I did not.

Q. Don't you know that you sent Cunningham in with instructions to tell Lee Chong that you wanted flowers, and that you wanted to list them as edibles?

A. I didn't send anyone.

Q. Don't you know that when the flowers were delivered out there and the bill was first presented

(Testimony of William E. Miles.)

and it was shown to you and you asked what the "oysters" were and you were told that they were the flowers you wanted, you said it was O. K.?

A. No.

Q. You didn't approve at all?

A. No sir.

Q. Mr. Miles, do you recall—would it be fair to say that you have been endeavoring to make things difficult or [346] troublesome for Mr. Mookini for some time?

A. No, not at all.

Q. It wouldn't be fair? It is true, is it not, that you made charges against Mr. Mookini with Mr. Lloyd?

A. I had made four charges altogether; I had reasons for it.

Q. That led to an investigation, didn't it?

A. It all led to the investigation.

Q. Yes, your charges led to an investigation, didn't they?

A. Sure.

Q. And don't you know that the result of that investigation was that you were directed and requested to resign?

A. It was over the question of Mookini being returned to the——

Q. Answer my question. Don't you know that, as the result of the investigation which then started, you were directed and requested to resign?

A. I was not.

(Testimony of William E. Miles.)

Q. It is your testimony that you were not asked to resign as director of that Camp, is that right?

A. I was given the privilege of resigning.

Q. Let's put it that way, given the privilege of resigning.

A. Because I objected to Mr. Mookini coming back into the Camp.

Q. Just a moment. I think we'll have to go back to another incident. Do you remember the occasion of the Junior Police picnic, or something of that kind, that was held out at your Camp?

A. Yes, sure.

Q. Do you remember that a bill for about two hundred and some odd dollars was sent for that material, to the Police Department in Honolulu?

Mr. MOORE: Just a moment. I object to this, may it please [347] the Court, as it has nothing to do with the issues in this case; it is not proper cross-examination, as it is not an explanation or an amplification of any testimony brought out upon direct examination, and it doesn't tend to prove or disprove any of the issues of this case.

(Argument between counsel).

Mr. MOORE: Just a minute, may it please the Court. In order to save time and in order not to get a lot of things before this jury that shouldn't be, I'll ask that the jury be excused and that Mr. Ulrich make his offer of proof so the Court can rule upon it in the absence of the jury.

Mr. ULRICH: That's quite satisfactory, if Your Honor please.

(Testimony of William E. Miles.)

The COURT: Gentlemen of the jury, you will be excused until called, and you will remain out of the courtroom until called.

(Jurors exit from courtroom).

Mr. ULRICH: At this time, if Your Honor please, I offer to show by the cross-examination of this witness—I may have my dates—subject to correction in the dates—some time in the Summer of this year——

Mr. MOORE: Last year.

Mr. ULRICH: This year that we're talking about,——

The COURT: 1934.

Mr. ULRICH: 1934, there was a Junior Police picnic held at the Camp, that a charge for that picnic—they fed some several hundred boys, I don't know just how many it was—was made to the Police Department here in Honolulu, in the amount of some two hundred odd dollars—I don't have the exact figures before me; that that bill was paid—it will appear in the evidence—to this witness by the Police [348] Department in Honolulu, in the amount of some two hundred odd dollars.

Mr. MOORE: $240.00.

Mr. ULRICH: That, following the receipt of that money, this witness did not deposit it; the check was cashed by him; he did not deposit it in the Camp funds, and that it was not deposited in the Camp funds until a considerably later time, some time about the 17th of July; that in the meanwhile

(Testimony of William E. Miles.)

Mr. Mookini discovered or, rather, came to Mr. Miles in the matter of investigating the books there, asking that a voucher be put in for that sum of money that Miles had received; that Mr. Mookini discovered that the money had not been received by the Camp at all, that this man Miles, as we contend, had practically converted the money himself, and then that Mr. Miles, in a desperate effort to get the funds wherewith to meet and replace the money that he had taken or held back in this matter, went to Mr. Lee Chong and tried to borrow $200.00 from him; that he and Cunningham had made several approaches to Lee Chong, and finally met him over here at the Young Hotel and got him down in some Chinese restaurant—I don't know exactly where the place was—and Mr. Lee Chong did lend Mr. Miles $200.00; we will show the promissory note that Mr. Lee Chong got; and that the very next day that two hundred odd dollars was repaid to the Fund and deposited in the Fund out at the Barracks. We will show that Mr. Mookini was threatening to expose Mr. Miles in connection with that transaction, and that Mr. Miles thereupon started these reverse charges against Mr. Mookini which led to his own dismissal when the things were finally investigated. [349] Now, if Your Honor please, I submit that that shows, in the first place, a distinct reason for an animus by the witness toward Mr. Mookini; it explains a great many things so far as what happened after that time was concerned, and

(Testimony of William E. Miles.)

it is directly pertinent as indicating the place that this witness has with reference to these various transactions, and further explains and throws light on this sudden charge, which comes later, against Mr. Mookini, as the witness has said, that fits in right after this check transaction, and it's something which we're entitled to have the jury know, to understand the true relation of the parties in the case, and certainly as going to the credibility of this witness and his interest and bias with reference to the other defendant in the case; he still owes this money to Mr. Lee Chong.

Mr. MOORE: May it please the Court, it's been testified in this case by the witness that he made a charge against Mookini out there; his animus, if any, is shown by that itself, and to bring in something about a Police picnic or a Police whatever you want to call it, has nothing to do with buying vegetables from Lee Chong; and it is only brought in here or attempted to be brought in here for the purpose of prejudice, and it has no place within the issues of this case; it is altogether a separate, distinct thing and has nothing to do whatsoever with this present case; and we submit that no evidence or no cross-examination upon that line should be allowed.

Mr. ULRICH: If Your Honor please, the very purpose of cross-examination is to show bias and prejudice; we're entitled to prejudice the witness if the evidence shows he is prejudiced.

(Testimony of William E. Miles.)

The COURT: It is the opinion of the Court that counsel for [350] the defense does have a right to show prejudice or bias or any matter that bears upon the credibility of this witness, but in order to do so we cannot try another crime. The facts you stated here would constitute embezzlement, a distinct crime under the statutes, one against which the statute of limitations of the United States has not yet run and for which this witness could be put on trial in this court; we cannot try two cases at once.

Mr. ULRICH: If Your Honor please, wouldn't the witness have to claim his privilege against incrimination to take advantage of that other situation; if he does that, I am foreclosed, I can't ask him any questions then.

The COURT: He could in that manner, of course, but he's not obliged to; it would be a constitutional privilege.

Mr. ULRICH: Do I understand that Your Honor rules that I may not cross-examine the witness' misappropriation of funds? Does the Court also rule that I may not examine the witness on the matter of borrowing money, for example, from one of the defendants in this case?

The COURT: Not unless it's claimed that the borrowing had some connection with this case in some manner. If it is intended to show that that borrowing was a mere pretext for covering up a bribe, or something of that kind, it may be permis-

(Testimony of William E. Miles.)

sible; but if it was a bona fide transaction of borrowing and lending, the Court would feel that it was improper.

Mr. ULRICH: Well, I feel that we should be allowed to get this into the record in the form of questions and rulings on those questions. I'll try to make the questions in such form as not to indicate them to the jury; I believe [351] we have an error —of course, that is merely an opinion; but I want to have exceptions taken in the proper way and preserved in the record.

Mr. MOORE: As I understand, may it please the Court, counsel has made an offer of proof, and the Court has ruled that what he intended to prove is not a proper matter to be gone into by this Court. An exception to that ruling is sufficient, and any questions to be asked of this witness have already been ruled on by this court to be improper; so that to ask questions and have a ruling on each and every question would be farcical. I submit that the record as it stands now is ample and sufficient.

Mr. ULRICH: Of course I'll take exception to the Court's ruling in refusing to allow the offer of proof.

The COURT: Let the exception be allowed; and future questions will be ruled upon as asked.

Mr. ULRICH: Yes; I believe that the reason for the ruling should be indicated to the jury; otherwise the jury may get the idea that I was trying to go into a matter totally irrelevant; if they know it's

(Testimony of William E. Miles.)

a matter of investigating a separate crime, then my position is—it would be the same thing as requiring a witness to claim his privilege.

Mr. MOORE: (Further argument).

The COURT: This witness has already testified that he preferred charges against defendant Mookini, and the Court will permit you to show any possible prejudice, if any exists; but we can't try a second offense here at this time. You may call the jury in, Mr. Bailiff.

(Jurors return to the courtroom).

The COURT: You will proceed, Mr. Ulrich.

[352]

Mr. ULRICH: Mr. Miles, I believe that you testified to the effect that at this later time that you took up this investigation, after you had already paid Mr. Lee Chong the bill which represents and covered that Mothers' Day bill, you went over the bill and check off certain items that you felt should have been charged against the Mess Fund, and charged that back against Mr. Lee Chong, is that right?

A. Correct.

Q. So that we may understand what this is all about, I show you first United States Exhibit "B", and the United States Exhibit "C"——

Mr. MOORE: Those are one and the same, Mr. Ulrich.

(Testimony of William E. Miles.)

Mr. ULRICH: I am just going to indicate that.

Q. Calling your attention to the fact that, so far as the typewritten matter appearing upon the two exhibits are concerned, that appears to be an original and carbon copy of the same bill, is that correct?

A. Correct.

Q. Now I call your attention to the United States Exhibit "D" and United States Exhibit "E", and to a similar situation with reference to that, namely, that the one is apparently, so far as the typewritten matter is concerned, a carbon copy of the other?

A. Correct.

Q. So that we may use for the purpose of this examination, for the moment, the two originals, as we may call it, Exhibits "B" and "D". Now, I understand your testimony to be that, so far as Exhibit "B" is concerned, listing such things as paper plates and napkins, one item of paper plates [353] and the other item of napkins, you never saw or heard of that——

A. (interrupting): It never came to me——

Q. (continuing): until away along in September some time, is that right?

A. Yes, correct.

Q. What you did see when you paid your bill was Exhibit "D", is that right?

A. Yes.

Mr. ULRICH: So I can get this jury so they can understand—I don't believe these have been shown or read to the jury—if I may just indicate a

(Testimony of William E. Miles.)

few things about these exhibits to this jury. We have in the first place, if you notice, an Exhibit "B", including, as you'll see, an item for oysters, also including an item of 200 paper plates, 1,000 paper napkins, and certain other items, through which lines have been drawn—strawberries, crabs, limu, opelu, and so forth—totaling $231.00; that's the bill that this witness says he never saw until along in September some time. On the other hand, we have "D" here, for which the amount of money it says, so far as payment of money is concerned, is $231.00, excepting that there does not appear on the bill paper plates and paper napkins; and, further, that these items, as you will see, through which lines have been drawn—paper plates and paper napkins and other things there which, for some reason or other were changed into other items, the paper plates and napkins became "carrots" or something of that kind, and the strawberries became "grape fruit"—I don't know just exactly what the changes were—calling your attention, however, to the fact that a considerable number of those things that were changed were edibles; [354] whereas, so far as I can see, only two items on the whole bill, totaling about $4.50, were non-edibles—paper plates and paper napkins; you can verify that by a more careful examination of the documents later on.

Q. Now, I understand your testimony to be, Mr. Miles, that you took this bill, when you were endeavoring to right things with the Mess, and endeavored

(Testimony of William E. Miles.)

to take out those items that were not edibles, in other words, those items which in your understanding could not properly be charged against the Mess Fund, is that right?

A. Correct—not these here.

Q. You endeavored to charge back against Mr. Lee Chong—perhaps I should say, those items appear to——

A. That was in October.

Q. I thought it was September; was it October——

A. Latter part of September.

Q. And then you took the original bill of the goods delivered and from that picked out those items which you felt did not represent edibles but represented something which could not properly be charged against the Mess Fund, and made up an item of some $37.00 which you charged back against Mr. Lee Chong?

A. I didn't take it from here at all; I took it from Mr. Lee Chong's own office in the presence of his clerk, who took it off himself; this never came in to my sight at all, I never saw these.

Q. Never saw that, even in October?

A. That came through Mr. Lloyd's office.

Q. What did you see in October?

A. This is what I saw in October, this one here (indicating); [355] these are all my check marks and notations with question marks here (indicating).

(Testimony of William E. Miles.)

Q. In other words, you refer to the document of which the typewritten matter is a carbon copy of the document I have been referring to, "B"?

A. Yes sir.

Q. You took, then, this Exhibit "E" and you checked off the items which you felt——

A. I first took it to Mr. Lloyd.

Q. First took it to Mr. Lloyd?

A. Yes, I took it to Mr. Lloyd's office and told him, I checked the item of 500 oysters, I says, "Jim, I have recently discovered that this 500 oysters is not true, I understand it's liquor brought in to the Camp".

Q. All right; what else did you say?

A. Then he told me, "What do you want me to do?" I says, "I make my report to you about it;" and he started his investigation.

Q. Now will you get back to my question?

A. Then——

Q. Go ahead.

A. Then he wanted me to put my report in writing, and my investigation and recommendations, which I did; and I think this—Jim Lloyd sent Mr. Matson, I think—I'm not sure—someone down to Mr. Lee Chong; Mr. Lee Chong came up, and through Mr. Lee Chong they got the invoice.

Q. Signed by Cunningham?

A. Yes; he showed me this (indicating).

Q. That's the one you never saw?

A. I say I got that through Mr. Lloyd; it never came into [356] my possession at all.

(Testimony of William E. Miles.)

Q. I'll take you to Mr. Lloyd's office in a minute. Just now let's go to this matter of the way in which you charged back this $37.00 item to Mr. Lee Chong. As I understand and as you said, this copy only referred to the carbon copy, is that right?

A. Yes.

Q. That was the copy—where did you get that copy?

A. That was in the Camp files.

Q. Well, of course, on that copy there doesn't anything appear at all excepting the items as they were billed, not showing the non-edibles, is that right; there's no item of non-edibles there?

A. Yes.

Q. Aren't you referring to the other carbon copy there?

A. No, this is the one.

Q. How could you from that copy pick out the edibles; how is it possible they don't appear?

A. I took this down to Mr. Lee Chong's office myself, and I says, "What is this 500 oysters anyway, Lee Chong; some say it's flowers and some say it's not?" So I sat there and he started talking with me and he said it was flowers. I says, "I understand there were other items; what became of the candies and other things that was used at the Camp?" That's when I started asking questions; then he told me what had been done, that Mr. Mookini and Cunningham came in to his office and brought the original and told him to make the

(Testimony of William E. Miles.)

changes; and that is the original on which the lines are made; and he told me that Mr. Mookini scratched those out. [357]

Mr. MOORE: That's referring to what, Mr. Ulrich?

Mr. ULRICH: He's referring now to Exhibit "B".

Q. And it's now your testimony that Lee Chong told you that Mookini had drawn those lines?

A. And Cunningham; and Mookini was the one that directed him to scratch out those items.

Q. And Mookini was the one that drew those lines?

A. Yes.

Q. That's what Lee Chong told you?

A. Yes, in the presence of his Filipino clerk.

Q. That was at the time you were endeavoring to find out the items that were improperly charged against the Mess Fund, is that right?

A. Yes.

Q. Then you took this bill—did Mr. Mookini show you what the other items had been, about paper napkins and all that;——

A. Mr. Mookini never showed——

Q. I mean, Mr. Lee Chong.

A. He had a memorandum, he had a sort of a sales book, from which he——

Q. I wish you would take this bill, Mr. Miles; you've got here a bill as presented, I mean, having which you could check certain items; did you make any check on that bill?

(Testimony of William E. Miles.)

A. Not at all.

Q. You understand there's nothing there but paper plates and napkins?

A. This was all in Cunningham's possession and turned over to Mr. Lloyd, and Lloyd turned it over to me [358]

Q. Do I understand your testimony to be that your $37.00 item was not taken from this bill at all?

A. It was taken from Lee Chong's office.

Q. You said on your direct examination that it included $17.50 which was for the oysters item?

A. I have a copy of my letter to Mr. Lloyd, which is with the investigator, which will show you those items.

Q. I'll be very glad to look at it; may I have the letter?

Mr. MOORE: I haven't the original. That is the copy of the letter to whom?

A. Lloyd.

(Mr. Moore hands document to Mr. Ulrich).

Mr. ULRICH: I'll look at this later; I haven't time to look it over now.

Q. Now, I understand your testimony to be that you took this $37.00 item from an independent memorandum that was given to you by Mr. Lee Chong, is that right?

A. Yes, from his own record in his office.

Q. You couldn't take this document here, then, and say it was $17.50 for the oysters item and that paper item or any other item?

A. I couldn't pick it out now.

(Testimony of William E. Miles.)

Q. Is it your understanding that it does or does not appear on this original invoice as sent out there to your Camp?

A. I don't know unless I refer to that.

Q. To what?

A. To that report of mine.

The COURT: Pardon me, Mr. Ulrich, but some of your examination has not been intelligible to the Court, and I am [359] certain it will not be, in the record. You referred to "this invoice", "this bill", "this carbon copy", and "this original", without identifying it as Exhibit so and so; and it's not getting into the record.

Mr. ULRICH: Yes, I have been careless, Your Honor.

The COURT: Mr. Miles, I want to call your attention to something; you've frequently shook your head "yes" or "no"; that doesn't get into the record; you'll have to say either "yes" or "no"—answer in words, so that the Reporter can get it.

A. I will do so.

Mr. ULRICH: The document to which I was referring—for the purpose of getting it into the record—when I asked you the question if you had taken any of the items which made up your $37.00 charge back against Mr. Lee Chong from that document, was United States Exhibit "C". I understood your testimony to be that you had not?

A. I had not.

Q. And that equally applies to the other exhibit, of which the Exhibit "C" is a carbon copy, so far

(Testimony of William E. Miles.)

as the typewriting is concerned, namely, United States Exhibit "B"; is that right?

A. Correct.

Q. Now, do I understand your testimony to be, Mr. Miles, that at the time that you were in Mr. Lee Chong's office, in the presence of his clerk or bookkeeper, and went over this list and picked out $37.00 odd dollars worth of merchandise that was to be charged back to Mr. Lee Chong, Mr. Lee Chong agreed with you that those items should be charged back to him? [360]

A. Correct, yes sir.

Q. In other words, Mr. Lee Chong at that time indicated to you that he was willing to waive the charge, if you might say, as to the $37.00 worth of merchandise?

A. No, he wasn't; he wanted to know how he was going to get his money.

Q. What did you mean by saying he agreed it was to be charged to him?

A. He agreed it was to be deducted.

Q. Deducted from what?

A. From the October payment.

Q. Well, wasn't that provided it was to be taken care of in some other way? Of course it wouldn't make any difference to Mr. Lee Chong how he was paid so long as he was paid, you understand?

A. Yes.

Q. Do I understand that it was to be taken care of and deducted from one bill and not taken care of in any other way?

(Testimony of William E. Miles.)

A. Well, the deduction was made from the Federal fund, from the Government money, but he could be paid out of the Canteen Fund.

Q. Of course Mr. Lee Chong didn't care what fund he was paid out of?

A. No, he wouldn't care, certainly not.

Q. But do I understand he agreed with you?

A. He agreed with me.

Q. That you should deduct this money?

A. Correct.

Q. From the money which you were about to pay to him, without any undertaking on your part that he was to be paid [361] that money in any other way?

A. It was understood he was to be paid out of the Canteen Fund.

Q. So that, all that Mr. Lee Chong agreed at that time was that he should make adjustment in his bookkeeping so that this bill should be paid one part out of the Canteen Fund and one part out of the director's fund?

A. Out of the Canteen Fund you can buy most anything, you can buy a house and lot, or an automobile; the government fund is restricted; and then when that matter was made known to him he agreed to have it deducted from his October bill, which was September payment paid in October.

Q. Please answer my question and confine yourself to the question, and that is, that the substance of the agreement at the time was merely, not that

(Testimony of William E. Miles.)

the bill should be waived or any part of it not paid——

A. Certainly not.

Q. (continuing): but that part of it should be paid out of one fund and part out of another; is that true?

A. It was understood that Mr. Lee Chong was going to be paid for all that he had furnished the Camp, but——

Q. Won't you please answer my question. Was it part of the agreement that he was to be paid one part of the bill out of one fund and one part out of another?

A. Yes.

Q. That's all I want. Now, to come down to the September episode. As I understand it, along about the middle of August or perhaps the first of August, early in August it was decided that there was to be held a luau——

A. A farewell. [362]

Q. Somewhere near the first of September, is that right?

A. On Labor Day.

Q. That was September what, do you remember that? It doesn't make a great deal of difference, but if you do remember, all right.

A. It was held on Saturday instead of Monday, that's all.

Q. On Saturday, Labor Day?

A. On Saturday, the 1st. Labor Day was on a Monday.

(Testimony of William E. Miles.)

Q. The matter of buying materials for the luau, I suppose, was discussed—or was it discussed?

A. Discussed.

Q. Between yourself and Mr. Mookini and Mr. Cunningham?

A. And the other officers.

Q. And the other officers. Again I ask you, in connection with these discussions which preceded the placing of the orders for the September luau, was anything said about the possibility of requiring any kind of purchases which would not be strictly edibles and chargeable against the Mess Fund?

A. There was.

Q. What was said in that connection?

A. Well, there was the paper bowls, and there was the paper plates, and all of that was discussed, and we agreed that that could be purchased and charged to our Canteen Fund.

Q. You agreed that that should be purchased and charged to the Canteen Fund?

A. Charged to the Canteen.

Q. Whom did you have that agreement with?

A. Amongst ourselves. [363]

Q. That is, you and Mookini and Cunningham?

A. They were all there, yes; that's the only way to pay it.

Q. You agreed that there were certain items which were to be purchased, which would not be edibles, but they should be purchased and charged to the Canteen Fund, is that right?

(Testimony of William E. Miles.)

A. Whatever we couldn't charge to——

Q. Just a moment; did you imagine this made any particular difference to Mr. Mookini whether it was paid out of the Canteen Fund or the Mess Fund?

A. Did it make any particular——

Q. Would he have any reason for charging it to the Canteen Fund rather than the Mess Fund; can you see any logic about it?

A. I don't know about it, I don't know his reason.

Q. So far as Mr. Lee Chong was concerned, he wouldn't care whether it was paid out of one fund or another fund, so long as it was paid?

Mr. MOORE: I object to that as calling for a conclusion of the witness. What this witness believes is not evidence.

Mr. ULRICH: I have a right, if Your Honor please, to show the nature of these transactions. I submit this is the most ridiculous charge that has ever been placed against two men in a court of law.

Mr. MOORE: May it please the Court, I'll ask that this statement be stricken and that counsel be instructed to refrain from making any such remarks. This was presented to the Grand Jury, and the Grand Jury returned a true bill of indictment.

[364]

Mr. ULRICH: Yes, and on what kind of evidence!

Mr. MOORE: On perfectly good evidence.

(Testimony of William E. Miles.)

Mr. ULRICH: If Your Honor please, I think I have a right to comment on all features of the case from time to time; I don't think it's unreasonable to make a comment of that kind. I do submit that the case is a case which has simply no foundation under any substantive construction of the law.

The COURT: That will be for the jury to determine from the evidence.

Mr. ULRICH: Certainly, Your Honor. (Further argument)

The COURT: What is the question, Mr. Reporter?

(Reporter reads question marked *, page 134)

Mr. ULRICH: Now that just asks the witness to indicate if he can see any motive Mr. Lee Chong would have in trying to fabricate the documents unless he was prompted to do so by somebody in authority.

The COURT: You may answer the question.

A. I don't know.

Mr. ULRICH: If Your Honor please, it's 10 o'clock; I'd like to take a recess at this time.

The COURT: Before taking a recess the Court would like to ask this witness one or two questions. Who had charge of this Canteen Fund?

A. The Camp Director; I had charge of the Canteen Fund.

Q. Were payments made by check the same as upon the subsistence fund?

(Testimony of William E. Miles.)

A. Yes sir. There's a little store there for the convenience of the men; it's outside of government activities.

Q. You drew all checks on the Canteen Fund yourself?

A. I drew those; I signed those checks. [365]

Q. That fund belongs to the men of the Camp—a sort of community affair?

A. Yes, a sort of community interest.

Q. The Government had no interest in that?

A. No sir.

Q. The only Government funds were in this Mess Fund?

A. Mess Fund, yes sir.

Q. You as camp director had charge of both funds?

A. Yes sir.

Q. And made payments from both funds?

A. Yes sir.

The COURT: The Court will now take a short recess.

(Recess—10:01 to 10:10 a. m.)

Mr. ULRICH: Mr. Miles, was it ever your practice to charge to the Mess Fund in the first instance articles which were not strictly or, as you might possibly say, properly chargeable against that Fund, with the idea of reimbursing the Fund at a later time?

A. No.

Q. Let me call your attention to what I have in mind—and this is on another line entirely, as you

(Testimony of William E. Miles.)

will instantly see. In the matter of this Junior Police picnic that was held——

Mr. MOORE: May it please the Court, the Court has already ruled——

Mr. ULRICH: I'm not going into this for the purpose of following up along the line I had originally intended, if Your Honor please, at all. This is for the purpose of showing a charge made against the Mess Fund which was entirely outside of Government purposes, without any impropriety in the first instance, and a reimbursement of the Fund—an idea which I have a perfect right to develop.

Mr. MOORE: We object to that question, may it please the [366] Court; it's a matter on which this Court has already ruled.

Mr. ULRICH: This has nothing to do with the matter the Court ruled on.

The COURT: If the purpose is to determine the method of how the accounts were kept, it will be allowed, and for that purpose only.

Mr. ULRICH: Yes, Your Honor.

Q. It is true, is it not, that there was a Junior Police picnic out there—when was it?

A. Is this a new question?

Q. A new question, yes.

A. Yes, there was.

Q. When was it?

A. On the Fourth of July.

Q. You fed a large number of these Junior Police boys, is that right?

(Testimony of William E. Miles.)

A. About 1,100 of them.

Q. And the money to feed them with was paid out of the Mess Fund, was it not?

A. It was paid out, yes, after Mookini charged it to the Fund; yes, it was paid out of the Mess Fund.

Q. After Mookini charged it to the Mess Fund?

A. Charged it to the Mess Fund, yes.

Q. Who made the payment out of the Mess Fund?

A. I did.

Q. Didn't you know what you were doing when you paid that money from the Mess Fund?

A. Well, he had it charged to the Mess Fund.

Q. Assuming he had put it down to the Mess, if it were not properly payable out of the Mess Fund, you could go right ahead and pay it? [367]

A. No, you couldn't.

Q. Why did you do it?

A. Because it was charged to the Mess Fund; and the Post Exchange and the Commissary, refusing my rendering any separate bill for Mr. Mookini, all remarked to me when I questioned about it he was instructed to keep these purchases separate.

Q. Do I understand your position now to be—your contention—that it would be improper to pay for the Junior Police picnic out of the Mess Fund and reimburse the Mess Fund out of a check from the Police Department?

A. No, that wasn't improper at all; that's customary.

(Testimony of William E. Miles.)

Q. Then what are you talking about? You say you only paid the money out of the Mess Fund because Mookini had it listed or charged against the Mess Fund?

A. Because it was charged; there was no necessity for charging it; we could have paid it direct with a check.

Q. Well, whether he charged it or not, you paid it out of the Mess Fund, didn't you?

A. Yes.

Q. And you considered that a perfectly proper thing to do, didn't you?

A. They do it every time, and it's proper.

Q. And then you pay the Mess Fund back at a later time?

A. At any time, yes.

Q. Now, take the matter of the non-edibles that were charged and paid out of the Mess Fund, so far as Lee Chong's first bill was concerned would there be anything quite improper about paying it out of the Mess Fund and then reimbursing the account from the Canteen Fund at some later time; would that be wrong, any difference at all between [368] whether he advanced moneys for wood or for a Junior Police picnic?

A. No, there's no difference.

Q. In other words, it was a customary thing to do, isn't that true?

A. It's customary, it's being done all the time.

(Testimony of William E. Miles.)

Q. Now, to come down to the September luau. You had just testified before we took the recess, as I understood it, that the matter of the non-edibles to be used in that luau had been discussed and it had been agreed that they should be charged against the Canteen Fund, is that right?

A. Yes; whatever is not chargeable—there's a lot of things, like wood and some wire netting required for the imu, and ti leaves, that was not edible and that couldn't be charged.

Q. The idea was, that had to be paid out of the Canteen Fund?

A. Out of the Canteen Fund.

Q. Then when you got the bill you didn't find any of these things on the bill, did you?

A. No.

Q. Did that surprise you at all?

A. No, it didn't surprise me; I asked for the items myself; "where is the things to be charged, and the bills for the ti leaves and the paper bowls and paper plates?"

Q. They found out that somebody had had Lee Chong put them in the former bill you paid, is that right?

A. Found out it had been charged under separate items there, items in the original bill submitted to me; and I called up Lee Chong and went down to his office and had them checked over. [369]

Q. So that—referring now to United States Exhibit "G"—that represented the bill as it was originally presented, is that right?

A. Yes.

(Testimony of William E. Miles.)

Q. Referring now to United States Exhibit "H" and Exhibit "J", which really have to be considered together, the Exhibit "H" representing the edibles which were still remaining charged against the Mess Fund after the readjustment, and Exhibit "J", the non-edibles which were thereupon charged against the Canteen Fund, is that right?

A. Yes, sir.

Q. The total being the same, $526.60?

A. $454.10 plus $72.50 will equal $526.60, correct.

Q. So that Exhibit "G" is, so far as the amount is concerned, the same amount as the two exhibits "H" and "J", the exhibits "H" and "J" representing a breaking down—if we may call it that way—of Exhibit "G" and a separate listing of the non-edibles and the edibles, the one being billed against the Canteen, and the other against the Mess Fund?

A. Correct.

Mr. ULRICH: Just so the jury will understand; this is what they call the "second count" of the indictment. Here is the bill as originally presented, $526.60; all of those items there would appear to be edibles. Then we have Exhibits "H" and "J", which represent the same amount, that is, the same total, being $526.60, broken up into $72.50 worth of wood and wire and bags and cigarettes and other things that were not edibles, and $454.10 of edibles.

Q. So that there was no change, was there, Mr. Miles, in the total amount that was charged? [370]

A. No, there was no change.

(Testimony of William E. Miles.)

Q. The difference being only that after the readjustment the one item was charged against the Canteen and the other against the Mess Fund?

A. Correct.

Q. And the bill that was actually paid out of the Mess Fund was only the $454.10, being Exhibit "H", is that right?

A. Correct.

Q. And the bill for $72.50, which was to have been paid out of the Mess Fund, has never been paid at all?

A. I don't know.

Q. Nor has Mr. Lee Chong ever gotten back this $37.00 that was charged back against him—or do you know?

A. I don't know.

Q. Do you know anything about the October bill which came after that, whether he was paid his October bill or not?

A. I don't know.

Q. If it's true that those bills haven't been paid, then Mr. Lee Chong is just out of pocket that much money, that would be obvious, wouldn't it?

A. Yes, that's obvious.

Q. And they want to sell him to jail for it! When did I understand you to say that this readjustment was maid, that is, the breaking down of the original luau bill; when were those two bills——

A. At the end of the month, the latter part of September, between the middle or the second or

(Testimony of William E. Miles.)

third week of September, towards the end, that was towards the end of the month.

Q. I'll ask this question and take the Court's ruling on it: [371] Is it not true that you borrowed $200.00 from Mr. Lee Chong?

Mr. MOORE: Now, may it please the Court, I object to that as endeavoring to get something in here that has got nothing to do with this.

Mr. ULRICH: That's a perfectly proper question, if Your Honor please.

The COURT: The Court will permit the question as long as it does go to the fact of borrowing.

A. I did.

Q. And you gave him your promissory note for $200.00?

A. I did.

Q. And you still owe him that money?

A. I do.

Q. This note is dated July 16th, 1934?

A. Correct.

Mr. ULRICH: The Court will not allow me to indicate the circumstances under which that note was made?

The COURT: The Court believes it would be improper and immaterial.

Mr. ULRICH: I'll take another exception to the Court's ruling.

The COURT: Exception is allowed.

Mr. ULRICH: Mr. Miles, you are one of the defendants in this case, aren't you?

A. I am.

(Testimony of William E. Miles.)

Q. Have you discussed your testimony, the testimony in evidence that you were going to give on this witness stand, with the prosecuting attorney before you took the stand?

A. Before I took the stand?

Q. Yes.

A. No.

Q. He had no idea what you were going to testify before you took the stand? [372]

A. When I was subpoenaed I consulted my attorney, "Shall I appear?" He said, "Yes"; and I came up and reported to the attorney, and he asked me if I had my subpoena; I said, "Not yet"; he says, "You can get it from the United States Marshal's office."

Q. I understand that you have not talked over this case with Mr. Moore, Mr. Stainback, or with anyone connected with the United States Attorney's office?

A. I have talked over this case with them.

Q. You have?

A. Back in October, after my resignation.

Q. But I mean, following your taking the stand here and after you were indicted in this case, you have not discussed the facts of this case with the prosecuting attorney's office, is that right?

A. I didn't quite get you as to discussing this case, Mr. Ulrich.

Q. There's nothing particularly difficult about understanding that.

A. All I was notified was I was to be a witness.

(Testimony of William E. Miles.)

Q. Yes, and did you talk over the facts of the case before you took the stand, with the District Attorney's office?

A. Not at all.

Q. You didn't?

A. I went before the Grand Jury.

Q. And since you have been indicted in this case and before taking the stand here, you didn't talk about the case at all with Mr. Moore?

A. I never went into a discussion of the details of the [373] testimony or anything.

Q. And you had no kind of understanding as to any immunity that might be given you by virtue of the testimony?

A. Not at all.

Q. As far as you know, you are still going to be tried under the indictment?

A. I do.

Q. For the crime of participating with these people in this juggling of the Mess Fund against the Canteen Fund, or anything else?

A. Whatever the indictment is, Mr. Ulrich.

Mr. ULRICH: That's all.

Redirect Examination

By WILLSON C. MOORE, Esq.

Q. Mr. Miles, this Canteen Fund that you speak of, how is that created?

Q. Well, that was created due to the prohibition of the Army department for the men going into the Canteen or the Post Exchange and buying, and we

(Testimony of William E. Miles.)

had to arrange some way for the convenience of the boys in the Camp; and we all decided, Major Mahaffy and all of us decided to have a little store there, and Mr. Colman, the camp clerk, was appointed as the Canteen officer, and he assumed the responsibility of securing the supplies from the Post Exchange, and we in turn sold it at the same price to the boys, for their convenience.

Q. You sold it at the same price that you bought it—any discount?

A. We got a little discount in some instances—2½ or 3 per cent discount, and 5 percent in some instances. [374]

Q. Then the Canteen Fund was built up from the discounts that you got?

A. Yes.

Q. That Fund was for whose use?

A. For the general convenience of the boys on materials that we could not purchase out of Government funds.

Q. In other words, the funds derived from that were to get things for the boys that they couldn't otherwise get?

A. Well, officers also, and the boys.

Q. Now, calling your attention to United States Exhibit "J", it being that exhibit that covers the various items for the luau of September 1st and also, I take it, an item of cigarettes and cigars and flower leis?

A. Yes.

Q. Who were the leis and the cigarettes and cigars for?

(Testimony of William E. Miles.)

A. I don't know; I noticed there were leis there used by some of the guests; but the cigarettes and cigars I did not see at all.

Q. They did not go into the Canteen for sale, did they?

A. No sir.

Mr. MOORE: That's all.

Recross Examination

By BARRY S. ULRICH, Esq.

Q. Do I understand that there weren't any cigarettes or cigars there, or you don't remember seeing them?

A. I never saw any of them.

Q. Never saw any of them?

A. Any of them.

Q. People weren't smoking cigars and cigarettes?

A. In the first place, I wasn't at the opening or beginning [375] of the luau; I came in later.

Q. You didn't see anybody smoking cigars and cigarettes?

A. No sir.

Q. You seriously say that you didn't see anybody smoking cigars and cigarettes?

A. I mean passing around any boxes of cigars and cigarettes; they were all smoking.

Q. In other words, you don't know where the smokes came from?

A. I don't know.

(Testimony of William E. Miles.)

The COURT: Were cigarettes and cigars sold regularly at the Canteen?

A. Yes sir.

Mr. MOORE: And those cigarettes and cigars were purchased from the Army Commissary?

A. From the Post Exchange.

Mr. MOORE: That's all.

JOHN EDWARD CUNNINGHAM

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. John Edward Cunningham.

Q. Were you ever connected with the Schofield camp of the Civilian Conservation Corps?

A. Yes sir.

Q. When?

A. The first of March, when the Camp opened up, sir. [376]

Q. In what year?

A. Last year, sir.

Q. 1934?

A. 1934.

Q. In what capacity were you connected with that Camp?

A. First Cook.

(Testimony of John Edward Cunningham.)

Q. Do you know Mr. Mookini and Mr. Lee Chong, the defendants in this case?

A. Yes sir.

Q. You were also a defendant, Mr. Cunningham?

A. Yes sir.

Q. And have entered a plea of guilty?

A. I did, sir.

Q. When you were first employed at the Camp of the Civilian Conservation Corps at Schofield, who was in charge of that camp?

A. Major Mahaffy.

Q. Who was directly under him, if you know?

A. Captain Miles and Mr. Mookini.

Q. What was Mr. Mookini's duties or what was his office when the Camp first started?

A. Recreation Officer then.

Q. Do you know a Mr. Gibson?

A. Yes sir.

Q. Was he connected with that Camp when you were first employed?

A. Yes sir.

Q. In what capacity?

A. Quartermaster and Mess Officer.

Q. Was Mr. Gibson your immediate superior?

A. Yes sir.

Q. Now, as chief cook what were your duties with reference to the procuring of food for the mess? [377]

A. Well, when I first went out there they told me to make out a list of what we wanted from the

(Testimony of John Edward Cunningham.)

quartermaster and from the vegetable dealer, Chun Hoon, out there.

Q. And did you make such a list?

A. I did, sir.

Q. What did you do with it?

A. I turned the list over to Mr. Gibson.

Q. Were the goods you requested later received?

A. Yes sir.

Q. When the goods were received, were there any receipts of any kind given for them?

A. Well, Mr. Gibson kept the receipts; he signed for everything while he was there.

Q. Was Mr. Gibson ever succeeded as Mess Officer?

A. Yes sir.

Q. By whom?

A. By Mr. Mookini.

Q. When was that, if you know?

A. The following month, I believe, about the first week.

Q. Well, approximately what month was it when Mookini succeeded Gibson, if you know?

A. About the first week in April.

Q. During the time that you were chief cook in Gibson's regime, where were the fruits and vegetables purchased?

A. They were purchased from Chun Hoon.

Q. And do you know where Chun Hoon's establishment was located?

A. I did, sir.

(Testimony of John Edward Cunningham.)

Q. Where?

A. Down right by the Quartermaster's there, at Schofield Barracks. [378]

Q. Under Mookini what was the usual procedure in obtaining foodstuffs for your mess?

A. It ran along the same as Mr. Gibson until we couldn't get sufficient stuff at Chun Hoon's there or we had the husks of everything that was left over, because I couldn't go down, because for all my stuff I made my list out and give it to Mr. Gibson; he tended to it. After a while I told Captain Miles, "We've got to make a change in vegetable ordering; we can't get sufficient stuff, we've got to take what's left after the Army has their supplies; we can't carry on this way, we've nothing but frozen meat this way; the help is all new at the game, so we have to do something." So Captain Miles suggested Aala Market; I says "O. K.". He said, "Do you know any good vegetable man in town?" I said, "I know a man named Lee Chong"; so he told me to phone him to come up, that he wanted to see him.

Q. Before we go on with that, let's go back. You say, under Gibson's regime Gibson went over and picked out the vegetables?

A. He used to go down and get the stuff; he used to go down there or phone the order in for me.

Q. Under his regime how were the vegetables and fruits?

A. Fair, but nothing to brag about.

(Testimony of John Edward Cunningham.)

Q. And all your canned goods, where does that come from?

A. From the Quartermaster, sir.

Q. And you say you suggested this man Lee Chong; did he ever appear on the scene?

A. He did come up and see Captain Miles, sir.

Q. And where did he come to see Captain Miles?

A. At Schofield Barracks, sir. [379]

Q. Ever introduce this man to Mr. Mookini?

A. Yes; afterwards they had a talk together, Captain Miles and Lee Chong, I believe. Captain Miles told me to go down with him and introduce him to Lee Chong and placed a small order with him there.

Q. Where did you introduce Mookini to Lee Chong?

A. Right in Lee Chong's office, sir.

Q. When was that, if you recall?

A. I believe the first order they got was about the 6th or 7th of April, somewhere around that time.

Q. What happened on that occasion, if anything?

A. We went down there and I introduced him, and he placed an order, and he promised to give us good service and good merchandise. He opened up a couple of bottles of beer for us, gave us a handful of cigars apiece, and off he went.

Q. Did you ever go down there afterwards?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. While you were at Lee Chong's—withdraw that.

Did Lee Chong ever have a conversation with you about Mookini, in Mookini's office?

A. Yes, sir.

Q. When was that?

A. That was about the end of the month.

Q. End of what month?

A. April.

Q. Where did that conversation take place?

A. It took place in his office.

Q. What was that conversation, to the best of your recollection?

A. Lee Chong told me that Mookini wanted his home account added in to the C. C. C. account. I told him, "I don't like the idea; you're fooling around with Federal people, [380] and you've got to explain that one of these days." "Well," he told me, "you fix it up"; I says, "No, you better wait a couple of days when I and him will come down here and you hand him the bill".

Q. Did you and Mookini come down a couple of days later?

A. Yes, we did come down there, and Lee Chong handed him the bill.

Q. Handed him what bill?

A. His personal bill for his home, around $34.00 and some odd cents; and he said, "Well, you and Jack fix that up". I says, "I'm not fixing nothing up". So he says to me, "There are a lot of cooks

(Testimony of John Edward Cunningham.)

looking for work and there are a lot of cooks willing to do as they are told; that's all I have to say; you meet me at the Capitol Building."

Q. What did Mookini do then?

A. He went up to the Capitol Building there and I had to meet him afterwards.

Q. After he left did you have any further conversation with Lee Chong?

A. Yes sir.

Q. What was that?

A. I told Lee, "This looks kind of funny——"

Mr. ULRICH: If Your Honor please, of course this has nothing to do with either of the charges in this case; I really don't mind it going to the jury; but at this time, for the purpose of a ruling, I move to strike all of the witness' testimony as to this conversation. I object to the present question on the ground that it deals with a matter not involved in the present issues, that it is merely an attempt to bring into the record something which did not even—it [381] wasn't even suggested that it had reached a point of any crime; and I'll take the Court's ruling.

The COURT: The motion to strike is denied.

Mr. ULRICH: I'll take an exception.

The COURT: Exception is allowed.

A. I told Lee, "This don't look so hot." "Well," Lee says to me, "if you don't sign the bill I lose the business." "Well," I says, "it looks kind of funny; they seem to have me over a barrel; I have

(Testimony of John Edward Cunningham.)

been up against it long enough, and now that I have a job he's trying to put difficulties on my head; if you fix the voucher I'll sign the voucher; but if I ever have anything against him I am going to turn him in."

Q. Did he fix them up?

A. He did, sir.

Q. Did you sign them?

A. I did, sir—to hold my job.

Q. That was in the month of April?

A. About the month of April, sir; $34.00 and some odd cents of merchandise went to his home.

Q. And you knew when you O. K.'d these bills that the items listed on them, Mr. Cunningham, were not true and correct?

A. Yes sir.

Q. Now, did a similar procedure to this ever happen again?

A. Yes sir.

Q. When?

A. It happened in May again; and I says——

Mr. ULRICH: Same objection, if your Honor please.

The COURT: Same ruling.

Mr. ULRICH: Note an exception.

The COURT: Exception noted. Mr. Cunningham, let me caution [382] you not to make any statement except what was said in the presence of these defendants,——

A. Yes sir.

(Testimony of John Edward Cunningham.)

The COURT (continuing): in the presence of Mookini and Lee Chong, or at least one of them.

Mr. MOORE: The next month's bill, did you have any conversation with Lee Chong or Mookini with refernce to that?

A. Along about in May—in June, around the 4th of June, Mookini asked me, "Did you fix up my bill with Lee Chong?" I says, "No." "Well", he says, "you better, if you know what's good for you." So Lee fixed it up again and I signed it.

Q. Do you know how much that bill was that was fixed up?

A. Something around $72.00, I believe.

Mr. ULRICH: Same objection, if Your Honor please; the question calling for matter having nothing to do with the indictment, endeavoring to prove a separate offense not charged in the indictment. I'll take the Court's ruling.

Mr. MOORE: This, may it please the Court, is not offered as evidence of charging any offense, but it is offered for the purpose of showing general scheme, lack of mistake, and guilty knowledge.

Mr. ULRICH: If Your Honor please, it is an attempt to prove another crime against the defendants and a different crime against the defendants.

Mr. MOORE: It is a similar crime.

Mr. ULRICH: I'll take the Court's ruling.

The COURT: The Court holds that the evidence is admissible.

(Testimony of John Edward Cunningham.)

Mr. ULRICH: Note an exception.

The COURT: Exception. [383]

Mr. MOORE: When this $72.00 item was covered up in a voucher, who O. K.'d that, do you know?

A. I believe I O. K.'d it, sir.

Q. Do you recall the approximate date of the voucher?

A. Well, it was around the first ten days of the month, about that, around that time.

The COURT: What month, Mr. Moore?

Mr. MOORE: I am talking about the month of May.

A. The month of May, yes sir.

Q. You say that was around the first part of May?

A. No; the voucher that was billed in the month of May was for April, that was covered around the 6th to the 8th, around that date; that's the first voucher; then the May voucher was covered in June.

Q. That is, the month following is when the voucher came in actually for payment; therefore, when you speak of May, that is the vouchers that were issued in April?

A. Yes sir.

Q. Was there any other voucher besides this one for $34.00 and some odd cents, and the one for around $72.00?

(Testimony of John Edward Cunningham.)

A. There was another one, then, for June; we ran that up, I believe, to——

Mr. ULRICH: I object to that; we have another crime every day.

The COURT: Same ruling.

A. About to $102.00 or $103.00 that voucher went up.

Q. Did you have any cnoversation during this period with Mookini concerning these covering up?

A. Yes sir. He asked me about that last voucher, he asked me about each one there; on the last voucher he asked [384] me, "Did you fix that voucher up?" I says, "No." "Well," he says, "you better; you better get ready to go to town." So that's how I come with him that day and had it fixed up; and I said, "That's the last voucher I am fixing up."

Q. That is the $102.00 or $103.00?

A. $102.00 or $103.00; I told him, "I'm not fixing no more vouchers up."

Q. After that was there any other voucher that he asked you to fix up?

Mr. ULRICH: Same objection.

The COURT: Same ruling.

Mr. ULRICH: Exception.

A. No, he never asked me any more; his general bills he paid himself.

Q. After this date did you ever have any conversation with Mr. Lee Chong about any of these bills, such as these?

(Testimony of John Edward Cunningham.)

A. Yes, I had; along in August, about the 12th or a little before that, about the 14th, rather; I told him, I says, "Lee, Bob is getting pretty difficult, he's getting pretty hard"—no, Lee Chong told me, "You know, I don't understand Bob." I says, "What's the matter?" He told me, he said, "He'll have to get you out of that job of yours, because as long as you're there he can't make no money." So when Lee Chong told me that I came back to Camp that night with Captain Miles, and he asked me——

Mr. MOORE: Never mind what you told Captain Miles.

Mr. ULRICH: He might tell that.

Mr. MOORE: Go ahead.

A. I told him that, and he asked me, "Well, has Bob gone crooked?" I says, "Yes". He says, "Have you got [385] anything on him?" I says, "Yes, I have;" and I took out of my pocket a wallet of Mothers' Day vouchers that come out there——

Mr. MOORE: Just a minute. Showing you United States Exhibit "C"; have you ever seen that before?

A. Yes sir.

Q. Is that the voucher to which you refer to taking out of your wallet?

A. Yes sir.

Q. Can you point out any items on that?

A. Items that we didn't receive; there's 400 pounds of pumpkin, strawberries, 500 oysters, that

(Testimony of John Edward Cunningham.)

we didn't receive on that; the others were camouflaged for paper plates, paper cups, and so on, and flowers, for Mother's Day.

The COURT: Mr. Witness, when a car goes by it makes so much noise it's very difficult to hear; so try and raise your voice so that part of the jurors can hear everything you say.

A. Yes sir.

Mr. MOORE: So that the jury can understand what we're talking about, this is the voucher of May 12th, the carbon copy that is United States Exhibit "C", which is the same one he took out of his wallet and showed to Mr. Miles. This Exhibit "B" is the original of that voucher and the one that has the lines through the various things. He's testified here that the 500 oysters and the 400 pounds of pumpkin were not received. (Showing documents to the jurors.)

Q. Calling your attention to United States Exhibit "D", which is the voucher that does not have the paper plates [386] and napkins on it; you say the Camp did not receive these 500 oysters?

A. No sir.

Q. 400 pounds of pumpkin?

A. No sir.

Q. How about apples?

A. Apples, there were only two boxes delivered, sir.

Q. How about spinach?

(Testimony of John Edward Cunningham.)

A. No spinach; that was all camouflaged in with the paper cups and flowers.

Q. Squash?

A. No.

Q. Lima beans?

A. No.

Q. Were you present when the delivery of this May 12th order came out?

A. Yes sir.

Q. Showing you United States Exhibit "B", I'll ask you if those are your initials at the bottom of that page?

A. They are; but when I signed this bill those lines weren't on there.

Q. That is, these lines through the items were not on there?

A. No sir.

Q. Do you know what this item of oysters is for?

A. Yes sir.

Q. What's it for?

A. That's for a box of booze that come out for Mr. Mookini; that was the last thing come out of the wagon;——

Q. And where was it taken?

A. Lee Chong told me on the bill that "Here is a box for Bob," and he says, "See that he gets it." I says, "What do you want to do that for, that's not right." So he says, [387] "Well, I can't help it, he makes me do it." So he handed me the box and I took the box into the storeroom; I was sure hot over

(Testimony of John Edward Cunningham.)

it; and I took the bill over to Mookini; Mookini was having his breakfast, between 10 and 11 o'clock, and I made him sign that voucher.

Q. That's the carbon copy of the voucher?

A. Yes sir.

Q. That's the one that you had in your wallet?

A. Yes sir, the one I had.

Q. Referring to United States Exhibit "C"—and after you put this stuff in the storeroom did it stay there?

A. It stayed there in the storeroom until that night, about half past five, Mr. Mookini come to me; he says, "Did Lee Chong bring a box out for me?" I says, "yes; a nice trick you played; good thing the old man didn't catch you checking that stuff in;" I says, "don't you ever pull that off on me again." He never said a word to me. He told me when it got a little darker to take it over to his tent.

Q. Was it taken over to his tent?

A. Yes; I and Herbert Lloyd took it over to his tent.

Q. Who is Herbert Lloyd?

A. Herbert Lloyd is the permanent "K. P.", in the kitchen.

Q. What did that box contain, if you know?

A. A little boy was opening the box in there, and I caught him peeping into it; I told him, "Keep away from there", Lloyd come there and he says, "What did you find——"

Mr. MOORE: Never mind. Do you know what was in it?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. What was in it?

A. There was liquor in it.

A. How much? [388]

A. There was 3 quarts of whiskey and 3 of gin.

Q. On this delivery was there some flowers came out?

A. Yes sir.

Q. I notice there is also listed on here 25 baskets of strawberries?

A. We didn't get them, sir.

Q. Do you know what these flowers were camouflaged as?

A. No sir; but I believe, in the spinach.

Q. You don't know?

A. I don't know.

Q. You did receive, though, the limu, opae, opelu——

A. Yes sir.

Q. Mixed nuts and candies——

A. Yes sir.

Q. After-dinner-mints?

A. Yes sir.

Q. And these flowers were used for what, Mr. Cunningham?

A. For decorations for the table for Mothers' Day.

Mr. MOORE: May we have a recess at this time, Your Honor?

The COURT: The Court will take a short recess.

(Recess—11:02 to 11:11 a. m.)

(Testimony of John Edward Cunningham.)

Mr. MOORE: At the time of this May 12th delivery was there anything said by Lee Chong about the item of oysters?

A. Yes sir; he told me that he had a box of liquor for Mookini marked as "oysters".

Q. You say that you started purchasing from Lee Chong shortly after Mookini became Mess Officer. From then on did the bills from there increase or decrease, if you know?

A. Increased right along, heavy.

Q. Were you still cook out there around the first of September?

Q. Yes sir. [389]

Q. And what happened around there; anything unusual happen around the first of September?

A. They had a luau out there.

Q. Any flowers out there at that time?

A. Yes sir, they had a lot of ginger leis out there.

Q. Where did they come from?

A. Came from Lee Chong.

Q. Any cigars or cigarettes?

A. Mookini had some cigars and cigarettes in his tent.

Q. Where did they come from?

A. That was supposed to come in on the bill; and I questioned him, "I didn't receive no cigarettes or cigars, what become of them?" He says, "I've got them in my tent."

Q. Mookini told you that?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. What was done with these leis, if you know?

A. They were given to the guests out there.

Q. Who gave them to the guests?

A. Mookini had the leis in his tent; and I seen the people all wearing ginger leis, all these friends that he invited out there.

Q. Did you get any leis?

A. Yes; I seen the box and I took one lei when I was called over there for some lemonade and some orange juice.

Q. Get any cigars or cigarettes?

A. No sir, I didn't get none from him that day.

Q. Did you see any cigars or cigarettes around there?

A. Yes sir, I seen them in his tent.

Q. And the cigars and cigarettes never went into the Mess?

A. No sir, I never seen them in the Mess.

Mr. MOORE: You may cross-examine. [390]

Cross-Examination

By BARRY S. ULRICH, Esq.

Q. Mr. Cunningham——

A. Yes sir.

Q. You don't like Mr. Mookini, do you?

A. Oh, I like everybody.

Q. You do?

A. I do.

Q. You're just sort of a friend of the world, is that the idea, you like everybody?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. You haven't been going around town here telling people how you were going to "get" this man Mookini, have you?

A. I don't think I've told anybody I'm going to get him.

Q. And you are the same Mr. Cunningham, are you not, who shot and killed——

Mr. MOORE: Just a moment, Mr. Ulrich; if you're going to bring that thing up—may it please the Court, I'll ask that the jury be excused——

Mr. ULRICH: All right.

Mr. MOORE: This matter that he's starting here, I know what it is; it has no place whatever in this case.

Mr. ULRICH: It has a perfect place in this case; the jury is entitled to know the type of man they're listening to here.

The COURT: Is it claimed that this man has been convicted of some felony?

Mr. ULRICH: It's not the thing he's been convicted of, if Your Honor please——

Mr. MOORE: Then that is the only thing that can come in [391] here; the idea of referring to something unless the man has been convicted of a crime in a criminal case is highly improper and prejudicial.

Mr. ULRICH: I submit it is proper, and I am willing to submit authorities on that, that I am entitled to go into a man's life when I am cross-examining him on the stand, to show the type of man

(Testimony of John Edward Cunningham.)

he is; he might escape conviction and yet be a man that no jury is entitled to believe.

Mr. MOORE: May it please the Court, I'll ask that before there's any discussion of this that the jury be excused.

The COURT: If counsel wishes to seriously urge this matter the jury will be excused.

Mr. ULRICH: I do wish to seriously urge it; I would like to show authorities; I have cases here.

The COURT: The jury will be excused until called.

(Jurors retire from courtroom)

Mr. ULRICH: If Your Honor please, as I understand the law, there are two separate and distinct things; one is the proof by independent evidence of a crime or offense or other thing in the life of the witness tending to discredit the witness; as to those things, by proof through another witness, we're confined to the commission of crimes or offenses to actual convictions in courts. In the case of Republic against Luning, 11 Hawaii 390, the rule has been laid down, in the courts of the Territory of Hawaii at least, if Your Honor please, to the effect that when a witness, however, is under cross-examination, within limits to be determined by the discretion of the Court, his past life may be gone into by the cross-examiner to any reasonable extent for the purpose of showing the type of a man who is on the witness stand. [392] The Court, of course, under the ruling in that case, has a right to stop counsel when the Court feels——

(Testimony of John Edward Cunningham.)

The COURT: The Court didn't get the citation.

Mr. ULRICH: 11 Hawaii 390, Republic against Luning.

The COURT: Can you state briefly what the facts were in that case? The Court is not familiar with it.

Mr. ULRICH: I don't know that I could even tell Your Honor the crime that was being charged; I was concerned only with the language dealing with this particular question, the right of counsel to cross-examine. (argument continued).

Mr. MOORE: May it please the Court, what is sought to be introduced here in evidence is this: It appears that some two years ago a man by the name of Piper was shot out at Kailua, and this man held the gun that shot him; then an investigation of that particular incident was made by a coroner's jury and a grand jury of this Territory; and this man by both of those bodies was exonerated from the charge of murder or criminal charge; a no-bill was returned; which shows, may it please the Court, that, insofar as this defendant is concerned with reference to that particular charge, there wasn't enough probable cause that this man had committed a crime. And because, if I in defense of myself or my home shoot somebody, is that to be brought up in a court of law before a junry to prejudice somebody? I don't care what the Supreme Court of the Territory of Hawaii says; it has been, in the Federal courts throughout this land, held consistently that the only question with reference to a crime that

(Testimony of John Edward Cunningham.)

you can ask a witness on the witness-stand is whether or not he has been convicted of a crime and that crime one involving moral turpitude. And [393] to go into that thing, what Mr. Ulrich proposes to do; has no bearing whatsoever on this case, and it's an attempt, a vicious attempt, to bring bias and prejudice into this case where it has no place whatsoever; and we submit that any question with reference to that episode at Kailua a couple of years ago has no place in this record.

Mr. ULRICH: I'll take the Court's ruling.

The COURT: It occurs to the Court that if we were to go into a matter of shooting, if a claim of self defense were made we would almost be obliged to inquire into it, or any other proper defense. It's true a witness cannot refuse to answer a question merely because it may tend to incriminate him; what we're primarily concerned about in this case are such matters as would bear upon the veracity of the witness rather than whether he may have been mixed up in some quarrel even though it had serious consequences. The Court certainly would not permit, Mr. Ulrich, that you go to the extent of inquiring into an alleged murder.

Mr. ULRICH: I'll take the Court's ruling, and just to get the Court's ruling I suppose I would have to make an offer of proof.

The COURT: Yes, you better make it a formal offer, for the sake of the record.

Mr. ULRICH: Yes. I'll offer to prove by this witness that, some time in the year 1933, along about

(Testimony of John Edward Cunningham.)

April or May of that year, at Kailua, on the Island of Oahu, this witness shot and killed an elderly man by the name of Piper, who was a cripple; and that thereafter the matter was called to the attention of the grand jury; on such evidence as was then introduced a no-bill was found. I'll take Your Honor's [394] ruling on the offer.

Mr. MOORE: We object to the offer, for the reasons already given, Your Honor.

The COURT: It appears to the Court that the offer simply amounts to this: That the defendant was accused of a crime, which was inquired into by a grand jury, and the grand jury did not indict the defendant. The objection is sustained.

Mr. ULRICH: Exception.

The COURT: Exception allowed.

(Jurors return to courtroom)

Mr. ULRICH: Mr. Cunningham, as I understand your testimony, you suggested to Mr. Miles the name of Lee Chong the first time that Lee Chong was brought out there, did you?

A. I did.

Q. And Mr. Lee Chong came out to the Camp thereafter and you gave him a first trial offer, or something of that kind?

A. Mr. Mookini gave him the first order.

Q. Mr. Mookini gave the first order. Now, that was when, as nearly as you can recall?

A. About the 6th of April, around that time.

(Testimony of John Edward Cunningham.)

Q. How soon—you say that Mookini and Lee Chong got together on this business of fleecing the Camp to the extent of Mookini's grocery bill, so that even in the month of April you covered up some of Mookini's groceries, is that right?

A. Covered it up in May.

Q. Not until May?

A. Covered up in May voucher for April.

Q. But the thing started in April?

A. Yes sir. [395]

Q. That's only May; you only got it in the month of April, didn't you?

A. I didn't know nothing about it until the end of April, when I was approached about it.

Q. You didn't know anything about it until May; but when it was finally called to your attention what you discovered was that during the month of April or some time before it was called to your attention Lee Chong and Mookini had got together and agreed that they would try and put the Mookini grocery bill on the government account, is that right?

A. That's what it was intended for.

Q. So where was this first conversation that you had with Mr. Mookini and Mr. Lee Chong about this charging of the grocery bill?

A. That happened about in May, right in his office.

Q. In May; what time in May?

A. About between the 2nd and 4th of May.

(Testimony of John Edward Cunningham.)

Q. Between the 2nd and 4th of May, in Lee Chong's office?

A. Yes, in Lee Chong's office.

Q. Just tell us again what was said there at that time, as nearly as you can recall.

A. That Lee Chong handed Mookini his bill, at that time, and he says, "You and Jack fix it up." I says, "I'm not fixing nothing up."

Q. What's the first thing that happened—just Lee Chong handed him the bill and says "Yoo fix it up"?

A. On this day you're asking me about, Lee Chong brought the subject up, at the end of April.

Q. This is the first time I'm asking you about.

[396]

A. First Lee Chong told me, "Mookini wants this bill camouflaged in the C. C. C. Camp;" I told Lee, "That don't look so hot; I don't want to mix myself in trying to pull stuff like this." He says, "Mr. Cunningham, if you don't sign it I lose the business."

Q. This happened the first of May, along about the first of May?

Mr. MOORE: He said the latter part of April, Mr. Ulrich; isn't that true?

A. This happened at the end of April.

Mr. ULRICH: And there were present yourself, Lee Chong, and Mookini?

A. No, not at that time.

Q. No?

A. Not at that time.

(Testimony of John Edward Cunningham.)

Q. The first time who was present?

A. First Lee Chong and I was present.

Q. Just Lee Chong and you?

A. Yes.

Q. And then Lee Chong told you that Mookini wanted to camouflage this grocery bill in the Government account?

A. Exactly.

Q. You said, "That doesn't look so good, Lee", and so forth, as you've said?

A. I told him, "Wait until him and I come to town in a few days and you hand him the bill in front of me."

Q. Then he and you came to town in a few days?

A. We did.

Q. And he handed him the bill in front of you, and Lee Chong says, "You take care of it, Jack", or something like that?

A. No; Lee Chong handed Mookini his monthly statement and he says, "You and Jack fix it up."

[397]

Q. "You and Jack fix it up"?

A. Yes.

Q. Whereupon you said you wouldn't fix it up?

A. I told him, "I'm not fixing nothing".

Q. I see; "I'm not fixing nothing". Then there came a time when your moral fibre weakened a little bit and you decided you would do it?

A. No, it didn't weaken then.

(Testimony of John Edward Cunningham.)

Q. It stood firm at that time—you were firm?

A. When he handed him the bill he says, "There's a lot of cooks looking for work and a lot of cooks willing to do as they're told"; later I said, "If it's getting this bad I don't know what to do"; Lee Chong says, "If you don't sign it I lose the business". I says, "Lee, to hell with that kind of business; but wait a minute, let me think it over"; and I thought it over; he says, "What are you going to do?" I says, "If you're willing to fix the voucher up, I'll sign it; but if I ever get anything on him I am going to turn him in."

Q. So that all happened at one conference?

A. One conference.

Q. So you didn't stand firm very long; you weakened at that first conference?

A. I did, on his threat.

Q. You say that the first month you covered up about how much of the groceries that Lee Chong had delivered to Mookini?

A. I didn't cover Lee Chong; I covered Mookini.

Q. That's what I mean; that Mr. Lee Chong had put in the bill, as I understand you, a certain amount of groceries that were never taken to the Camp at all?

A. No. [398]

Q. That were sent to Mr. Mookini personally; and how much was it in April?

A. Around $34.00 and some odd cents.

Q. How do you say "$34.00 and some odd cents"; where did you get those figures in there; is

(Testimony of John Edward Cunningham.)

that some sort of recollection, or is there a memorandum you have?

A. No memorandum; I remember thoroughly that first month, about $34.00 and some odd cents.

Q. Do you remember how it was covered up, or anything of that kind?

A. Lee Chong entered it in as one item we had ordered for the Camp, then he would camouflage something, and so on down the line.

Q. Did you receipt and O. K. the vouchers as they came in; do I understand that to be your testimony?

A. I checked them when I was there.

Q. And you would come to some item that wasn't there, for example, and you would make a mental note that that was probably the groceries that were going to Mookini?

A. Exactly.

Q. And in that way you found about $34.00 worth of groceries that didn't come into the Camp that month?

A. Exactly.

Q. The next month how much did you find?

A. The next month she ran about $72.00 and some cents.

Q. $72.00 and some cents?

A. $72.00 or $73.00; about $72.00, I believe.

Q. You didn't make any memorandum of that, did you?

A. No sir.

(Testimony of John Edward Cunningham.)

Q. Then the next month it kept on, and it ran about how [399] much the third month?

A. About $102.00 or $103.00.

Q. So that during—the first month would have been for April, the next would have been the bill for May, and then the bill for June; how much did they put on the bill for July?

A. The July bill he paid himself.

Q. Who paid?

A. Mookini. I stopped signing them vouchers, and I told Lee Chong, "It's got to be stopped."

Q. When did you stop signing his vouchers?

A. He got his account in April, May, and June; and for April it was covered in May, May in June, and June in July.

Q. How did you happen to stop; what happened to stop you?

A. Well, I didn't like the idea, the way he was going.

Q. After you had covered up about $200.00 worth of groceries there, you decided that the thing had gone far enough, is that right?

A. Exactly.

Q. So you come to him and told him it couldn't happen any more, is that right?

A. No; I told him I wasn't signing no more vouchers.

Q. Then after that, when the groceries kept on coming out there, did you ever find groceries that

(Testimony of John Edward Cunningham.)

didn't appear on the list, such as you had before; you said you wouldn't O. K. them?

A. No, everything come out all right.

Q. Instantly, when you said you weren't OK'ing any more vouchers, they stopped sending them out there—that is, stopped holding goods out? [400]

A. No, they didn't stop holding goods out.

Q. They kept right on them, did they?

A. The goods that we ordered for the kitchen.

Q. But the bills would come out there and you'd have groceries that wouldn't arrive, just as before?

A. No sir; everything came out.

Q. That's what I am saying: Just as soon as you told him you were OK'ing no more vouchers they didn't hold out any goods on the bills that were sent to you?

A. They never did hold out any, only those vouchers I did sign when they camouflaged the bills.

Q. But the voucher comes out with the groceries?

A. It does.

Q. As the voucher comes out with the groceries, the way you would know what was going on would be the fact there was an item appearing on the bill that you didn't receive, and you would say "That has gone to Mookini"?

A. That was for the first three months.

Q. Now then, after you had made this declaration of independence saying you weren't going to stand for it any more, do I understand that they did or did not continue to send out statements with

(Testimony of John Edward Cunningham.)

merchandise which was not being delivered on the statements?

A. As the statements come out the goods come out with them.

Q. So they did stop the practice immediately when you told them you weren't going to stand for it any more?

A. Exactly.

Q. Do I understand that you and Lee Chong and Mookini were the only people who knew about this thing when it was going on there, is that right? [401]

A. Correct.

Q. Did you testify before the Grand Jury?

A. I did.

Q. Did you tell them all about this thing?

A. Yes.

Q. Rather a surprise to you that after hundreds of dollars of defalcations they only bring indictments in two counts in this case, I suppose?

A. I don't know what they brought.

Q. You told them, though, that you had been covering up hundreds of dollars worth of personal groceries that went to Mr. Mookini and never came out to the Camp at all?

A. That I only covered up for the first three months.

Q. That you only covered up for the first three months; you told them that, did you?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. And all we get is this seventeen odd dollars flower item and sevently two dollars for keawe wood, cups, wire, and so on, for the luau, that's all there is in the indictment?

A. I don't know.

Q. You don't even know what you're indicted for?

A. I know what I'm indicted for.

Q. You're not indicted for any connection with Mr. Mookini's personal groceries, are you?

A. I am indicted for that, for signing these false vouchers.

Q. Don't you know that the vouchers in this particular case have nothing to do with these particular items that you have been talking about for Mookini's groceries over the months of April, May, June and July?

A. That's the only three that's been covered.

Q. Don't you know that the two counts in this case have to do solely with the Mothers' Day bill in May and with [402] the luau bill in September?

A. The luau bill in September, as I said, when I signed that voucher for delivery there I questioned him about the cigarettes and cigars and he said he had them in his tent.

Q. Just another question: You understand that's all that's involved in this case—those two bills?

A. There's three bills I signed for.

Q. I don't care how many bills you signed. According to your testimony you were signing

(Testimony of John Edward Cunningham.)

vouchers every other day; but, so far as this case is concerned, you know that all you are charged with under this indictment is with respect to these two bills?

A. I am charged with signing these false vouchers; that's all I know about.

A. Yes, in connection with these two bills—Mothers' Day and the luau bill—is that right?

A. I don't know.

Mr. ULRICH: Well, the indictment speaks for itself, so far as that's concerned. This would be a convenient place to adjourn.

The COURT: Remember the admonition of the Court heretofore given you, and refrain from discussing this case among yourselves or permitting anyone to talk to you about it until the case is finally submitted for your decision. We will now be adjourned until 9:00 o'clock tomorrow morning.

(Adjourned—11:46 a. m.) [403]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Thursday, May 16th, 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants Robert K. Mookini and Lee Sau Chong being present with their respective counsel Earl R. McGhee and Barry S. Ulrich, Esq.;

(Testimony of John Edward Cunningham.)

WHEREUPON, the following further proceedings were had and testimony adduced:

The COURT: Does counsel stipulate that the jury are all present?

Mr. MOORE: Yes, Your Honor. Ready for the United States.

Mr. ULRICH: Ready for the defendants.

The COURT: Mr. Ulrich, you stipulate that the jury is present, do you?

Mr. ULRICH: Yes, Your Honor.

The COURT: Let the record so show.

Mr. ULRICH: May I continue, Your Honor?

The COURT: Yes, you will proceed. [404]

JOHN EDWARD CUNNINGHAM resumes the witness stand, under continued Cross-Examination by Barry S. Ulrich, Esq.

Q. Mr. Cunningham——

A. Yes sir.

Q. I understood you to testify that Mr. Mookini did most of the buying or purchasing of foodstuffs, and so forth, is that right?

A. He was authorized to.

Q. He was authorized to?

A. Yes; he was the Mess Officer.

Q. As a matter of fact, who did most of the ordering—he, or you—would you say?

A. Most of the ordering was done through the Commissary.

(Testimony of John Edward Cunningham.)

Q. Most of the ordering was done through the Commissary?

A. Through the Commissary.

Q. Now let's confine our attention to the ordering in town; who would you say did most of that?

A. I had to make out my lists of what I wanted and show it to him; he would tell me to go ahead and phone in for it or "If you're going in give the order".

Q. Who would go in and give the order?

A. If I was going in to town; if he was going in to town, as he did on several occasions, he took the list himself and gave Lee Chong the order himself.

Q. Sometimes you would place the order, sometimes he would?

A. Most of the time I would place the order.

Q. Most of the time you would place the order?

A. Over the phone.

Q. And sometimes — you have the different vouchers here— [405]

sometimes he would receipt for the goods that were purchased, sometimes you would?

A. Exactly.

Q. And then those receipts, with either his or your O. K. on, would go into the records and in due course would make part of the bill which would be paid at the end of the month, is that right?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. Now Mr. Cunningham, under those circumstances why in the world do you suppose that Mr. Mookini would have to come to you and ask you to permit him to go through any sort of deal of this kind with Lee Chong such as you've testified to?

Mr. MOORE: Just a moment. I object to that question as calling for a conclusion of this witness; the question is "Why do you suppose?"

Mr. ULRICH: (Argument)

Mr. MOORE: May it please the Court, the question of the reasonableness of it is a question for argument. The question as to what this man thinks is reasonable or unreasonable is calling for his conclusion and is not evidence.

Mr. ULRICH: If Your Honor please, I don't expect to get anything as evidence that's worth anything as evidence; I don't believe this testimony is worth a thing.

Mr. MOORE: Just a minute; I object to that course of conduct and request that this Court instruct this jury to disregard any such statement, and that counsel refrain from making statements of that kind in the presence of this jury.

Mr. ULRICH: If Your Honor please, I believe I have a right—in answer to counsel's comment—to suggest that I'm not [406] eliciting evidence as evidence from this witness; I'm examining this witness on cross-examination for the purpose of discrediting his testimony, of showing the type of man that he is, and of analyzing the evidence he has

(Testimony of John Edward Cunningham.)

given, with the obvious view, as the jury know, of showing his evidence isn't worth a thing, as I'll eventually contend. If Your Honor please, I submit that's a perfectly proper answer to counsel's suggestion that I am confined to the eliciting from this witness of relevant testimony. I submit I'm not in this case confined at all; I have the full scope of cross-examination.

The COURT: The Court, however, feels it's improper for both counsel to argue the question of the weight or credibility of testimony at this time in connection with the objection.

Mr. ULRICH: Yes, Your Honor.

The COURT: That should be done when it comes to argument to the jury, when the testimony is being weighed for that purpose. Your question "Why do you suppose" so and so seems to the Court to call very clearly for the conclusion of the witness.

Mr. ULRICH: Certainly.

The COURT: If the question is put in the form, does he know why he did it, the Court would admit it as a proper question.

Mr. ULRICH: Very well; I'll state it that way.

Q. State, if you know, Mr. Cunningham, why Mr. Mookini came to you and took you before Mr. Lee Chong to get you to agree to a scheme whereby he was to camouflage certain of his personal items on bills which you were to O. K., for he could have OK'd them himself and not have had to disclose [407] it to you at all; why do you suppose he did it?

(Testimony of John Edward Cunningham.)

Mr. MOORE: I object to "why do you suppose".

Mr. ULRICH: State if you know why.

A. I don't know why; he was my superior officer at that time; I had to do just as I was told.

Q. You felt you had to do just as you were told, no matter what you were told to do, is that the idea?

A. I was told to do that and I done it.

Q. You "done it" because you felt you had to do anything you were told to do, is that the idea?

A. Not anything. I was out of employment and I just picked up a job and I wanted to hold my job, and when he threatened me that way I couldn't do no more.

Q. When he "threatened" you?

A. In the presence of Lee Chong; "if I wouldn't do that there were a lot of cooks looking for work".

Q. Yes, you had a great little speech about "a lot of cooks looking for work"; there were a lot of—I saw some report of your evidence as "crooks"; it was "cooks" that he said, is that right?

A. I don't know about "crooks"; you probably made up them; I said "cooks".

Q. Just before we leave this little matter of the personal account: You gave us on your direct examination, as I recall, the April figure, which was $34.00, is that right?

A. $34.00 and some odd cents.

Q. You're quite sure it was not a flat $34.00?

A. No sir, unless Lee Chong *when* and changed it in his account.

(Testimony of John Edward Cunningham.)

Q. Unless Lee Chong changed it?

A. Yes sir. [408]

Q. It would be thirty four dollars and some odd cents, that's the April figure, is that right?

A. That's the April figure, camouflaged in May.

Q. Now then, the May figure was how much?

A. I believe it was around $72.00 or $73.00; I don't remember correctly.

Q. Between $72.00 and $73.00?

A. Yes, and some odd cents.

Q. Now which is it; is it seventy-two dollars and some odd cents, or seventy-three dollars and some odd cents?

A. It's either one of those figures.

Q. It's either seventy-two dollars and some odd cents, or seventy-three dollars and some odd cents?

A. I'm not sure which one it was.

Q. You're not sure which one it was, but it was either one or the other, with a few odd cents, and not in even dollars, is that right?

A. Yes.

Q. And the hundred odd dollars figure in June was how much, did you say?

A. I believe it was $102.00 or $103.00.

Q. This time was it a flat figure, or were there some cents added on?

A. I don't remember correctly.

Q. It might this time have been a flat figure?

A. I don't know about the cents; I believe they all ran a little extra.

(Testimony of John Edward Cunningham.)

Q. Well, you know that the others ran extra; you have been very definite to the effect that there were some odd cents on April and May; now, as to the June figure, are you [409] just as definite about that, or not?

A. Probably so.

Q. Are you, or are you not; do you know the June figure any more definitely than you know the other figures?

A. Probably more, a few more cents, and probably not; I don't remember exactly.

Q. As to the June figure you are actually willing to tell us you don't remember whether it was a few odd cents over an even figure, or not, is that right?

A. I believe it was probably an odd figure.

Q. You believe it was an odd figure?

A. Yes.

Q. Well, 102 dollars and some odd cents, do you mean?

A. That, or 103 dollars.

Q. It might have been 103 dollars?

A. Yes.

Q. Your memory as to the June figure is not quite as definite as to the April and May figures?

A. My memory is—it's been so long ago that I don't keep all of those in my head.

Q. That's why I have been trying to find out what's in your head; what have you been doing—carrying a memorandum around with these figures on?

A. I got no memorandum.

(Testimony of John Edward Cunningham.)

Q. When did you last see these figures?

A. I see them in the papers every day.

Q. In the papers every day?

A. You see figures in the papers every day.

Q. What are you talking about?

A. What figures do you mean? Explain yourself thoroughly.

Q. I mean the figures for the amounts of Mr. Mookini's [410] groceries that were charged into this account in the months of April, May, and June; that's the figures I'm talking about; you knew that, didn't you?

A. No, I didn't quite understand that.

Q. You didn't quite understand that?

A. No, I didn't quite understand you.

Q. What were you talking about when you talked about seeing the figures in the papers?

A. The way you come out with the figures, I have seen these figures continuously.

Q. Where?

A. In the United States Marshal's office.

Q. In the United States Marshal's office?

A. I mean, in the United States Attorney's office.

Q. And how did they get into the United States Attorney's office?

A. I don't know, sir.

Q. When did you first commence to see figures in the United States Attorney's office?

A. It's a long time ago, sir.

(Testimony of John Edward Cunningham.)

Q. A long time ago you saw figures in the United States Attorney's office; how long ago?

A. I seen these vouchers.

Q. How long ago?

A. About a month or two before I was indicted.

Q. About a month or two before you were indicted you saw the vouchers?

A. Something like that, yes sir.

Q. And the figures you saw were the vouchers?

A. Yes. [411]

Q. Don't you know the vouchers don't have these figures we're talking about, at all; don't you know that?

A. I don't know; I have seen figures on vouchers.

Q. They have nothing to do with these figures we're talking about; these are the figures that were camouflaged on the vouchers, according to your testimony—they didn't apear there at all; don't you know that?

A. They were camouflaged on the vouchers.

Q. They weren't there, though?

A. Not to total as one.

Q. And the figures you have given us—$103.00, $102.00, $72.00, you didn't see them on the vouchers, did you?

A. They were added on the vouchers.

Q. You didn't see them on the vouchers?

A. No, but they were added on the vouchers.

Q. Yes, I know that; as a matter of fact, you know perfectly well you haven't seen these exact

(Testimony of John Edward Cunningham.)

figures at all, have you, except in your own imagination?

A. Yes, I have, at one time when Lee Chong showed me these bills that he had to add in on these vouchers.

Q. The last time you saw them was when Lee Chong showed them to you on the vouchers, is that right?

A. He showed these figures to me.

Q. Will you answer my question?

A. He showed me these figures of Mookini's account to be added on, camouflaged on these vouchers.

Q. And that's the last time you saw them, is that right?

A. No.

Q. It's not right; well, what are you talking about seeing? [412]

A. I seen them in Captain De Ville's presence when he questioned me; I seen them figures again.

Q. Now then, Lee Chong showed you some figures on his vouchers indicating goods that had gone to Mookini, is that right?

A. Correct.

Q. And said, "Now look here, Mr. Cunningham, these are the goods that did not go to the Camp, and went to Mookini"; is that right?

A. No; he said, "This is Mookini's statement".

Q. "This is Mookini's statement"?

A. Yes.

(Testimony of John Edward Cunningham.)

Q. In other words, he showed you a copy of his account with Mookini?

A. Yes sir.

Q. Then that account had been, as you understood, transferred into or camouflaged into the Camp account?

A. Exactly.

Q. And he carried a separate account for Mookini?

A. It's supposed to have been, because he showed me his statement.

Q. Well, he showed it to you?

A. Yes sir.

Q. Well, we'll show you what that account really shows.

Now, to take up for a minute the Mothers' Day—I show you United States Exhibit "B" and Exhibit "C", which, as you can see, are copies so far as the typewritten matter on the exhibits are concerned, Exhibit "C" being a typewritten carbon of Exhibit "B". Now, as I understood your testimony, when this Mothers' Day order was brought out to the Camp you were there and received the goods from Lee Chong, is that right? [413]

A. Yes sir; Lee Chong brought it out himself.

Q. And he gave you one or the other of these vouchers, which, after the goods had been checked over, you signed and gave back to him, is that right?

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. Which one was that?

A. I believe that was this one (indicating).

Q. That is your signature, is it?

A. Initials, sir.

Q. Those are your initials?

A. Yes sir.

Q. Referring to United States Exhibit "B". Now then, as to Exhibit "C", did you see that document at that time and on that day?

A. This very bill?

Q. That piece of paper, yes.

A. Yes sir.

Q. This Exhibit "B", after you had signed, you gave back to Lee Chong; he took it back with him, did he not, or did he?

A. Yes sir, he took it back with him.

Q. That refers to the one on which your initials appear. What about this Exhibit "C"?

A. I kept that one.

Q. You kept that; he gave you that one, did he?

A. I was supposed to turn that in to the office, which I never did.

Q. You never turned it in to office?

A. No.

Q. Why didn't you turn it in to the office?

A. Because I kept that for reference.

Q. You kept it for reference. The customary practice was, on the delivery of a load of goods out there, the [414] original invoice or bill for the goods after you had checked it over would be signed and

(Testimony of John Edward Cunningham.)

turned over to Lee Chong as his receipt and he would take it back, and the carbon copy would be left for the records?

A. Either one or the other.

Q. One copy would be signed by you, and one copy taken back by Lee Chong, and the other copy would be left and placed in the records of the Camp?

A. Yes.

Q. I understand that Exhibit "C" is the one that was left, and that you did not place it of record at all, is that right?

A. This one, yes sir.

Q. It's the one on which Mr. Mookini's signature appears?

A. Yes sir.

Q. I understood you to say that, so far as this delivery was concerned, there were no oysters delivered?

A. No oysters.

Q. You receipted for $17.50 worth of oysters which were not delivered, is that right?

A. Correct.

Q. And in the place of those oysters, I understand your testimony to be, there was delivered liquor to the extent of $17.50, billed as $17.50, is that right?

A. That's what Lee Chong told me, he was delivering this box of liquor, and he was camouflaging that as oysters, for Mr. Mookini.

(Testimony of John Edward Cunningham.)

Q. He said he was camouflaging this box of liquor as oysters?

A. Yes, as oysters. [415]

Q. He pointed out this $17.50 bill, that that was what represented the liquor, is that right?

A. Yes, he told me he had marked it as oysters.

Q. Who was there when that happened, did you say?

A. Mr. Mookini——

Q. When Lee Chong presented you with this box, "These are the 'oysters'; it's liquor for Mr. Mookini", or something of that kind, who was there?

A. Mr. Mookini was having his breakfast at the table out there.

Q. I'm not asking who was having breakfast——

A. You asked me who was there.

Q. Was he there?

A. He was having his breakfast in the dining room.

Q. He was within earshot—he could have heard what was said?

A. Yes.

Q. So as Mr. Mookini could have heard?

A. He could have heard what was going on. Lee Chong was talking to me outside of the kitchen; he told me he had a box of liquor.

Q. Who was there heard what was said? Who in the world can corroborate what you're telling us?

A. You don't think Mr. Mookini was right alongside Lee Chong?

(Testimony of John Edward Cunningham.)

Q. I am asking you——

A. That's what I'm telling you.

Q. There was nobody there as party to this conversation except Lee Chong?

A. That's right, when he delivered the box to me.

Q. Was there any other time when anyone was present when Lee Chong told you about that liquor?

A. No, nobody was present. [416]

Q. So, as to whether or not Lee Chong told you that he was delivering liquor, it's a matter between you and Mr. Lee Chong, is that right?

A. Well, not according to the statement.

Q. What do you mean "not according to the statement"?

A. We got liquor in place of oysters.

Q. That's what you're telling me, but this conversation of Lee Chong's—you say that it was received, and all that is a conversation between you and Mr. Lee Chong?

A. That's just what I told you a second ago.

Q. You knew at once, then, that this was liquor, didn't you?

A. Yes.

Q. Just as soon as you got it?

A. Yes.

Q. Where did you put it?

A. Put it in the storeroom, down below.

Q. Say anything to Mr. Mookini—he was sitting at breakfast?

A. No, I didn't say a word to him; I took the bill over to him and made him sign it.

(Testimony of John Edward Cunningham.)

Q. Right then?

A. Right then.

Q. Did you say the liquor was there on the bill?

A. Didn't say a word.

Q. Just put the bill out and asked him to sign it?

A. Just put the bill out and a pencil there, "Here, receipt your goods".

Q. Whereupon he signed it?

A. He signed it.

Q. Nothing said about liquor?

A. Nothing said.

Q. So far as Mr. Mookini was concerned, he was not aware there was liquor on the bill? [417]

A. He kind of was, but he didn't say a word; he knew it was coming out, all right, sir.

Q. Where did you say you put it?

A. I put it in the storeroom; didn't you hear me?

Q. You put it in the storeroom. It stayed there all day?

A. All day.

Q. You waited until dark at night?

A. Not dark at night, just a little dark.

Q. Why didn't you take it over to Mookini's tent right away?

A. I didn't have no orders; I was waiting for him to come and see me.

Q. You didn't have no orders?

A. No.

Q. And although it was for Mookini you waited for it to be dark before delivering it to his tent?

(Testimony of John Edward Cunningham.)

A. It was marked with his name on the box.

Q. So you left it in the storeroom all day?

A. I did, and I stayed there all day keeping a good eye on it, too.

Q. Then at night you decided you were going to take it over to Mr. Mookini's tent?

A. I did not decide.

Q. You didn't decide?

A. No sir.

Q. Well, you must have come to that conclusion somehow or other?

A. Mr. Mookini came to me at half past five and asked if Lee Chong brought his box. I told him, "Yes"; then I told him, "It's a fine trick to pull off, Bob; too bad the old man didn't check if off when it come in; don't you dare pull that off on me again." He never said a word; and when it got a little dark we took it over to his tent. [418]

Q. He was the one who suggested waiting until it was dark?

A. That's his orders.

Q. Then you took it over to his tent?

A. I and Herbert Lloyd.

Q. When was this that you examined the contents?

A. I examined the contents after—they had a little boy in the storeroom filling up the shelves with the groceries there, and he seemed to be very curious, and he opened up this box, and I caught him opening up this box; I told him, "Ting Sing Wong, get out of here, what are you doing with that box?"

(Testimony of John Edward Cunningham.)

Q. That was the name?

A. Ting Sing Wong.

Q. Go ahead.

A. Better write it down.

Q. I am doing that. Go on.

A. He got out, and just then Herbert Lloyd came in, and he says, "What's the matter, Jack?" I says, "Here's a box of booze for Mookini." "Geewhiz," he says, "what's the matter?" I says, "I don't know; just leave it there, say nothing, that's all." We looked into it——

Q. Who was it looked into it?

A. I and Herbert Lloyd.

Q. Did you take the bottles out to see what they were?

A. They were wrapped; we unwrapped them; we seen them all.

Q. You unwrapped each bottle, saw what it was?

A. Saw what it was.

Q. What kind of whiskey was it?

A. As close as I can remember, it looked like Crab Orchard; it was Manila Gin, three bottles of Manila Gin. [419]

Q. Crab Orchard whiskey?

A. It looked like Crab Orchard whiskey, but it was whiskey; there was bona fide seals on them.

Q. Was it labeled?

A. It was labeled; as close as I can remember, it was Crab Orchard whiskey.

Q. Three bottles of the same kind?

A. Three bottles of the same kind.

(Testimony of John Edward Cunningham.)

Q. Quart bottles, or pints?

A. They were quart bottles.

Q. What kind of gin was it, you say?

A. Manila Gin.

Q. Also labeled?

A. Also labeled.

Q. Three bottles?

A. Three bottles.

Q. Same kind of bottles?

A. Yes sir.

Q. And then at night—this was during the daytime when you saw what it was—you took it over to his tent and left it there?

A. Yes.

Q. At a later time, did I understand you to testify, you saw Mr. Mookini direct changes which were to be made in this bill by Lee Chong; what happened about those lines?

A. I don't know nothing about those lines; all I know, that the following day after this Mothers' Day he asked me for this bill, and I told him I didn't know what became of it.

Mr. MOORE: What bill are you referring to?

A. The bill that Mookini sent for Mothers' Day.

Mr. MOORE: What exhibit is that, Mr. Ulrich?

Mr. ULRICH: He's talking about Exhibit "C"; is that the one (indicating)? [420]

A. That's the one.

Q. All right, go ahead.

A. He said, "Well, that's all right, I'm going down town today, I'll see him, I'll get his bill," he

(Testimony of John Edward Cunningham.)

says, "I'll fix it up." I says, "Why?" He says, "We got to change some stuff on there"; so it was done.

Q. So you had nothing to do with the changing of that bill at all, is that right?

A. He done the changing.

Q. At least, you didn't do it, you know that?

A. No sir.

Q. And you didn't see that bill at all with those marks on it, those lines, until it was produced in the course of this investigation or trial, is that right?

A. Yes sir.

Q. Now then, you indicated certain definite items on that bill which were not delivered; which ones were they?

A. The oysters weren't delivered,——

Q. Yes, you've told us that.

A. The pumpkins weren't delivered, I believe,——

Q. Where is the pumpkins (looking at document)?

A. Away down below (indicating).

Q. Oh, yes, the last item. Yes?

A. The strawberries weren't delivered; oysters, strawberries, pumpkins,——

Mr. MOORE: Still talking about Exhibit "C", Mr. Ulrich?

Mr. ULRICH: He's using them both now; I don't know which one he's referring to; both "C" and "D" are in his hand.

(Testimony of John Edward Cunningham.)

A. Where is the other bill with the squash?

[421]

Mr. ULRICH: Those are the two bills.

Mr. MOORE: That's Exhibit "D", the one he's asking for now.

Mr. ULRICH: We've got "D" and "C" here.

Mr. MOORE: There's another bill he's asking for, that has squash on, Mr. Ulrich.

Mr. ULRICH: Well, Mr. Moore, these are the only bills that came out with the load; that's the original bill; I am asking him which was changed; any other bill won't help.

Mr. MOORE: He's already testified to that.

A. I have already testified to that.

Mr. ULRICH: I am trying to get it definitely in the record, to see if this is the same as before.

A. Lima beans didn't come out; squash didn't come out; spinach didn't come out.

Q. Look at the bills; I want to see those items.

A. They're on another bill.

Q. Those are the only bills for the things that were changed; I am trying to find out what changes were made for articles that didn't come out.

Mr. MOORE: He's already testified, Mr. Ulrich, that the items on there that didn't come out were strawberries and pumpkin.

Mr. ULRICH: Yes; now he apparently enlarges it to squash and a lot of other things.

(Testimony of John Edward Cunningham.)

Mr. MOORE: He's already told you that squash and pumpkin are on another bill.

Mr. ULRICH: Please let him answer the question, Mr. Moore.

A. Squash and pumpkin were camouflaged for flowers and other things. [422]

Q. Where is the squash?

A. It's on another bill.

Mr. ULRICH: That's the voucher that came out with the load, isn't it?

Mr. MOORE: May it please the Court, it's apparent that this witness is referring to another bill with squash and so on with it. He stated with reference to another bill two or three items, the items which are camouflaged on it, and he's asking for Exhibit "D" which has squash and so on on it. I think the witness is entitled to have the exhibit to which he refers.

Mr. ULRICH: I'm not examining it yet; I can conduct my cross-examination as I desire.

The COURT: It appears to the Court that your questions are entirely proper. What you're seeking to get is what items were on the original invoice that came with these goods that were not delivered?

Mr. ULRICH: Certainly, that's the question.

The COURT: Let the Court at this time ask both counsel on a certain matter. It seems to me the terms "invoice" and "voucher" have been used rather interchangeably here. Is it to be understood that is the case, or is there a different meaning for one or the other?

(Testimony of John Edward Cunningham.)

Mr. ULRICH: The only difference I know is, an invoice becomes a voucher when it's properly receipted and signed.

Mr. MOORE: I have spoken of them interchangeably; when I refer to "invoice" or "voucher" I am speaking of these particular exhibits that are here in evidence.

Mr. ULRICH: I have used the terms more or less interchangeably. I believe that technically a voucher is a [423] receipted invoice or a statement —a receipt.

The COURT : It makes no difference, just so we get it straight, so that one doesn't understand one thing and one another. The jury should have a correct definite understanding of what we are talking about. At this time, Mr. Witness, the Court would like to ask you a question.

Q. In talking to Mookini, in which you called him "Bob", you referred to someone as the "old man"; whom did you mean when you said "the old man"?

A. Generally we called "the old man" out there Captain Miles.

Q. It was Miles that you meant when you were referring to "the old man"?

A. Yes sir.

Q. The Court would like to ask you another question: You have several times referred to Lee Chong's "office"; where is Lee Chong's office?

A. Aala Market.

(Testimony of John Edward Cunningham.)

Q. Here in the City of Honolulu?

A. Yes sir.

Q. And these things that you said occurred at Lee Chong's office occurred at his office in the Aala Market?

A. Yes sir.

The COURT: Proceed.

Mr. ULRICH: You've told us, Mr. Cunningham, that oysters——

A. Oysters——

Q. What else?

A. Strawberries, pumpkin——

Q. Were not delivered?

A. Not delivered. I believe that cooking bananas—I am in doubt on this cooking bananas.

Q. Oysters, strawberries, and pumpkin; and some doubt about the cooking bananas. Was the limu delivered? [424]

A. Yes sir.

Q. The opae—was that delivered?

A. Opelu.

Q. Opae?

A. It's opelu.

Q. Was that delivered?

A. That was delivered.

Q. The mixed nuts?

A. That was delivered.

Q. The candy?

A. That was delivered.

Q. After dinner mints?

(Testimony of John Edward Cunningham.)

A. Yes sir.

Q. Hot pepper?

A. Yes sir.

Q. And, to the best of your recollection, the balance of the bill, excepting those items that you've designated, is that right?

A. The rest were delivered, yes sir.

Q. Now I'll show you the other two exhibits, being the Government's Exhibits "D" and "E," the one being a carbon copy so far as the typewriting material is concerned, of the other; and ask you when you first saw either one of those documents?

A. This is the camouflaged bill.

Q. Whatever it is, when did you first see it?

The COURT: Mr. Ulrich is asking you when you first saw it.

A. I might have seen, not this bill but a copy of it, in Lee Chong's office.

Q. When?

A. When Mr. Mookini afterwards went down to camouflage the bill.

Q. When he went down to camouflage the bill?

A. Yes.

Q. Were you with him?

A. I don't think I was; he went down himself.

[425]

Q. What do you mean, you "might have seen it in Lee Chong's office"?

A. Afterwards, when I went down to place an order.

Q. You mean, you might have seen it some time later?

A. Yes.

Q. Well, did you?

A. I might have, I might not; I'm not sure.

Q. I call your attention, Mr. Cunningham, to the fact that this other bill here does have squash and spinach, two things that you have been referring to as not having been delivered. What were you thinking about when you told us that the squash and spinach were not delivered, when it didn't appear on the original bill at all but only on this bill which you never saw unless you saw it at some time in Lee Chong's office?

A. This is the camouflaged bill, as I say.

Q. I understand it is, but is it the bill you didn't know anything about?

A. No sir, I didn't know nothing about it.

Q. Well, how did you commence to think about the articles that appeared on that bill in telling us of the goods that weren't delivered?

A. Because I remember seeing a bill like this afterwards in Lee Chong's office; it was a camouflaged bill;——

Q. But look at what's camouflaged.

A. I know it's camouflaged.

Q. Just look, though; the very articles which were delivered, actually, you say, these things were delivered, those are the articles that have been changed?

(Testimony of John Edward Cunningham.)

A. Have been changed to spinach, lima beans, squash. [426]

Q. That isn't camouflaging something that wasn't delivered; it's camouflaging something that was?

A. Because they weren't allowed to purchase that.

Q. They weren't allowed to purchase limu from the company fund?

A. Limu probably they had, but not candy and the rest of it.

Q. But what I am asking you to see is the fact that the things you say are camouflaged there are not the things you say weren't delivered, but a lot of things that were delivered.

A. It was delivered; as I am saying, it's been delivered.

Q. You say, for example, that the pumpkin wasn't delivered?

A. The pumpkin wasn't delivered.

Q. No, but there's the pumpkin that comes back in the changed bill?

A. Yes, in the changed bill.

Q. With the lima beans and the spinach; don't you see there's no sense to it; the pumpkin is still on the changed bill?

A. This is the camouflaged bill.

Q. That is what I'm saying, it's on the "camouflaged" bill; what's the meaning of it all?

A. This 400 pounds of pumpkin was camouflaged for the flowers.

(Testimony of John Edward Cunningham.)

Q. The 400 pounds of pumpkin was camouflaged for the flowers?

A. Lee Chong fixed it up some way; it was camouflaged for the flowers we got, because we wasn't allowed to buy flowers.

Q. How do you figure out that the pumpkin was camouflaged as flowers rather than the oysters, for example?

A. Not the oysters. Lee Chong told me about the oysters.

Q. Lee Chong told you—they're both about the same; one is $17.00, and the other is $17.50, isn't it?

[427]

A. No sir; the pumpkin has been camouflaged there under flowers or something else.

Q. A lot of things are camouflaged there that were actually delivered?

A. Here on the delivery slip we got our candy, we got our dried opelu, after-dinner-mints, assorted candies, assorted nuts; we received all of that, but we received no fresh oysters.

Q. All right, Mr. Cunningham, you went down or were sent down by Mr. Miles, were you not, to make certain statements to Mr. Lloyd, or to his office, with reference to charges that Mr. Miles had made against Mr. Mookini?

A. Mr. Lloyd sent for me.

Q. Yes; you went down, anyway, to make a statement?

A. I went down, but not to Mr. Lloyd.

(Testimony of John Edward Cunningham.)

Q. No, you made it to Mr. Matson, I believe, did you not?

A. Yes. Mr. Lloyd said nothing to me.

Q. Whoever in the office you made a statement to, you were called down there to make a statement in connection with this investigation which was going on, and the person you made the statement to was Matson?

A. Yes sir.

Q. At that time did you make a statement telling all about this personal account of Mr. Mookini that had been camouflaged, or did you merely tell him about these bills that we're talking about here now?

A. I told Mr. Matson the same things as I am telling the Court here.

Q. You did? [428]

A. Yes, on these camouflaged vouchers;——

Q. Oh yes, on these camouflaged vouchers; that probably was fixed——

Mr. MOORE: Let him finish, Mr. Ulrich.

A. (continuing): and Mr. Matson said to me then, "What are you going to do about it; you can't do nothing about it; you better forget about this." So I took the voucher that I had in my pocket, and I showed him about this 500 oysters, and this liquor coming out; I says, "How about this?" He says, "You're just as guilty as Mookini on this thing." I says, "What are you worrying about me?" "Well," he says, "if I was you, you just better

(Testimony of John Edward Cunningham.)

forget about it and say nothing to nobody about it." It seems that Matson was covering Mookini on this thing.

Q. Oh yes, just a moment. You told Matson about the liquor?

A. Yes sir.

Q. Matson told you to forget it?

A. To forget it, "say nothing to nobody."

Q. Did you tell him or anybody down there anything about these personal groceries charged, and all that sort of thing?

A. I had to tell him according to the camouflaging on the bill that had covered the false voucher.

Q. The April, the June, and the May bill, did you go into that with him, too?

A. Yes sir; everything was there; it was only him and I in the room there.

Q. You never made any statement to Mr. Lloyd?

A. No statement at all; Mr. Lloyd asked me nothing about it; he says, "Go in the next door; Mr. Matson wants to see you." And when I showed him that voucher he asked me to get a copy [429] of that voucher; I says, "I want this bill back"; he says, "You'll get it back"; but he never returned it to me until I sent Captain De Ville after it and told him what he had that belonged to me there.

Q. What are you talking about; it was up in the office?

A. I turned that over to Mr. Matson; Mr. Matson was to take a copy of it and promptly return it to me.

(Testimony of John Edward Cunningham.)

Q. Mr. Matson was the officer investigating these charges?

A. Supposed to have been.

Q. You know that, don't you?

A. I don't know that.

Q. He was in Mr. Lloyd's office at the time?

A. Yes.

Q. Mr. Lloyd told you to carry on the investigation; told you to go in and talk to him?

A. He told me nothing.

Q. He told you to go in and talk to him?

A. Yes, he told me to go in and see Mr. Matson; that's all he told me.

Q. On this Mothers' Day luau bill, do I understand that you did or did not know anything about the changes made in that bill; that's the September bill?

A. I believe there were changes made in that bill; may I have a look at it.

Q. Sure; that's your signature there (indicating)?

A. Yes sir.

The COURT: Which exhibit is that?

Mr. ULRICH: Pardon me; that's Government's Exhibit "G".

A. These changes were made here on the 15 gallons of mayonnaise, mushrooms 10 pounds, 300 pounds pumpkin,—— [430]

Q. Just a moment; I want to ask your whether you had anything to do with the changing or revising of that bill?

(Testimony of John Edward Cunningham.)

A. Mr. Mookini and Mr. Lee Chong tended to that bill about the changing of this stuff.

Q. Mr. Mookini and Mr. Lee Chong did?

A. About the changes, because these things, what we had in place of the firewood and so on, an item of 72 dollars and some odd cents, that had to be camouflaged.

Q. So that Mr. Mookini and Mr. Lee Chong were the ones that arranged for the changing of that bill, is that right?

A. They did.

Q. How do you know that they did?

A. Because I gave my list of what I wanted for the luau, because Captain Miles asked for that list, and after they had the list, I believe, on hand, Mr. Mookini went down to Lee Chong and placed the order; he gave the order a week ahead of time, so some of the items I wanted were cut down and some were raised.

Q. So he did all that changing?

A. And that camouflaging was done for the other stuff, the bill of $72.00.

Q. And did Mr. Lee Chong and Mr. Mookini make the changes in the bill when it was finally put in?

A. I believe the next day Captain Miles went down and had that thing straightened out.

Q. As I understand you, this firewood and these various items came out there all right?

A. They came out there; I didn't order no firewood and no wire——

(Testimony of John Edward Cunningham.)

Q. They were delivered? [431]

A. They were delivered.

Q. Are you suggesting that Mr. Mookini used all of the leis for himself and the flowers that day; you had some evidence about leis and flowers?

A. He coudln't have used them all for himself; he got them for the guests that were coming out there.

Q. Well, he was distributing them?

A. I didn't see him distribute them, but I noticed all of the girls and all of the guests having ginger leis.

Q. I just want to get your idea; were the leis improperly converted by Mr. Mookini, or taken to his tent, or was everything all right so far as the leis were concerned?

A. Everything was all right so far as that's concerned, but having the Fund money paying for the leis I think is a different story.

Q. How about the cigarettes and cigars, he kept all those himself, did he?

A. He kept those.

Q. Nobody else got those cigars and cigarettes but Mr. Mookini?

A. I don't know about that.

Q. What were you trying to tell us on your direct examination; that he did, or did not?

A. He had that stuff in his tent.

Q. He had cigars in his tent; you don't know whether he distributed them from his tent?

A. No, but I noticed the young ladies were smoking cigarettes all day long.

(Testimony of John Edward Cunningham.)

Q. Wasn't that what they were out there for?

A. Sure they were out there for a good time.

Q. I mean, the cigars to be smoked at the function; wasn't [432] that what they were there for?

A. I think so; not to eat.

Q. Did he take the candy to his own tent; anything else you want to say that he took to his own tent?

Mr. MOORE: What's that?

Mr. ULRICH. I am just giving him a chance to put some other things in Mr. Mookini's tent.

A. That's up to you; you can question me.

Q. I am questioning you; I am asking whether there's anything else he took, any other things besides candies, cigarettes, and cigars——

Mr. MOORE: I object to the question—putting candy in Mookini's tent.

Mr. ULRICH: I beg pardon; I'll take out the candy. Besides cigarettes and cigars and flower leis, was there anything else that Mr. Mookini took to his tent?

A. No, not that I remember.

Q. Mr. Cunningham, did or did not you have oysters at the dinner out there Mothers' Day?

A. Yes, we did; we had canned oysters.

Q. Was it in stew, or something of that kind?

A. Oyster stew; I made the menu of that day there; but that menu disappeared off the files.

Q. Mr. Cunningham,——

A. Yes sir.

(Testimony of John Edward Cunningham.)

Q. Were you in the habit of going down town to the people with whom the Camp was dealing and endeavoring to get a split with them on orders that were delivered to the Camp?

A. No sir.

Q. You didn't do that?

A. No sir. [433]

Q. Isn't it the fact, Mr. Cunningham, that you did on an order for a slicing machine from the Hurd-Pohlmann Company which came out to the Camp, in the amount of $180.00, request and ask for payment to you of a commission or something in that nature in the amount of $18.00?

A. No sir; that's a lie.

Q. Is it not true that you asked—did not Mr. Glowenlee, who was employed by the Hurd-Pohlmann Company—my question is, is it not the fact that when you were speaking to this man you said that you wanted a payment of $18.00 or thereabouts for yourself on account of a sale to the Camp of a slicing machine which was billed to the Camp at something in the neighborhood of $180.00—that's a lie?

A. That's a lie. I never knew a slicing machine was coming out until Mr. Mookini brought it out or had it sent.

Q. You never knew a slicing machine was coming out until Mr. Mookini brought it?

A. Yes, he brought it out.

(Testimony of John Edward Cunningham.)

Q. You never had any talk with Mr. Glowenlee or anybody else connected with the Hurd-Pohlmann Company about payment to you of any amount of money, of $18.00 or anything else?

A. No sir.

Q. That's true, is it?

A. Yes.

Q. And your testimony now is just as true or just as false as anything you've testified to here?

A. It's true.

Q. And no more true or no less true than anything you testified to here?

A. I never knew nothing about this machine coming out; the [434] machine was left out there on trial, and the way that machine was ordered was that I begged Captain Miles to buy the machine because we needed it in the worst way——

Q. I'm not concerned in that; what I am interested in is that, when you say there never was any conversation in which an amount of $18.00 or any other amount was discussed for payment to you on account of that delivery——

A. No sir, that's a lie.

(Recess—10:00 to 10:10 a. m.)

The COURT: Were you through with the cross-examination, Mr. Ulrich?

Mr. ULRICH: Yes, Your Honor.

The COURT: The Court so understood it.

(Testimony of John Edward Cunningham.)

Re-Direct Examination

By WILLSON C. MOORE, Esq.

Q. Mr. Cunningham, you saw this man Glowenlee out at the C. C. C. Camp when this meat cutter, or whatever it was, was delivered?

A. Yes sir.

Q. You had a conversation with him out there?

A. Yes, I had a conversation with him in the kitchen there.

Q. Was that about a sum of about five dollars and something?

A. He came out; before that time he was out there and he was speaking to Mr. Mookini about I receiving some graft money on purchases before that time; we wanted some knives, we had to get some knives in the worst way; Diamond-Hall was cleaned out; and I told Mr. Mookini the one place we could get them was Hurd-Pohlmann; so the office here gave me an order to go down there and order them; so while they were [435] wrapping up the knives and making out the bill there I signed for it; Mr. Byer and Mr. Pohlmann there were having some conversation there, and he says, "Mr. Pohlmann, we ought to do something for Jack here, he's always been good to us, always put us wise when there's something new going up"; so when I was ready to walk out Mr. Byer called me and handed me $5.00, saying, "Here Jack, go buy yourself a box of cigars."

Q. Did you take the $5.00?

A. I did.

Q. Did you buy the cigars?

A. Certainly; and I told Captain Miles that night about it.

Q. You had a talk with this Glowenlee one day?

A. Afterwards he came out there, and I understand Mr. Mookini accused me of receiving graft from Hurd-Pohlmann; I says, "I don't receive no graft; if there's anybody getting graft, it's you." So I went to Captain Miles and told Captain Miles about this; he says, "Don't you worry about that; I'll take care of that." So, later on, when the machine came out, we was trying the machine out there, and I says to him,——

Q. Says to "him"?

A. To this salesman.

Q. Glowenlee?

A. Yes; I says, "What's this big idea of you coming out here and telling Mr. Mookini that I am receiving graft?" He says, "I didn't say nothing like that." I says, "You're bringing a slicing machine out here, and if they buy it I might as well go down and get the graft that's coming to me; might as well have the name as the game;"—just like that, in a joke; and that's all what I said. The machine wasn't purchased then, it was only on trial.

Q. Mr. Cunningham, with reference to these vouchers, calling [436] your attention to United States Exhibit "B," which is the original of

(Testimony of John Edward Cunningham.)

the voucher of May 12th which bears your initials, which is in the sum of $231.00, and contains the items of oysters, strawberries, and pumpkin; and calling your attention to Exhibit "G", which is the voucher of September 1st which bears your initials, which has on it the items of the yams, the honey-dew melons, and the pumpkin, dried mushrooms, and 15 gallons of mayonnaise; as I understand it, when these groceries came out you initialed these vouchers?

A. Yes sir.

Q. And gave the initialed vouchers—it may be the original or it may be the copy——

A. Yes sir.

Q. (continuing): back to whoever delivered the goods?

A. Yes sir.

Q. And then you have a retained copy?

A. Yes sir.

Q. And what did you do with the retained copy?

A. I have orders to turn them in to the office as soon as they come in.

Q. After they're turned in do you have anything to do with them after that?

A. Nothing to do with them; the mess officer takes care of them, sir.

Q. Then calling your attention to United States Exhibit "H", which is a correction or a voucher correcting United States Exhibit "G" by deleting therefrom the items of 25 pounds of yams, 6 cases honey-dew melons, 300 pounds pumpkin, 10 pounds

(Testimony of John Edward Cunningham.)

mushrooms, and 15 gallons of mayonnaise, did you [437] ever have anything to do with that particular document?

A. You mean, of the camouflaging of them?

Q. No; the altering of that—deleting the goods.

A. No, I didn't; only when Lee Chong come out and brought these things he told me that these were camouflaged for the stuff that came out, such as the wire, the firewood, and so on.

Q. But you had nothing to do with these others?

A. Nothing, sir.

Q. The only ones that you had anything to do with are the vouchers——

A. Yes sir.

Q. (continuing): that come with the loads——

A. Yes sir.

Q. (continuing): at the time of their delivery?

A. Correct, sir.

Mr. MOORE: That's all.

Re-cross Examination.

By BARRY S. ULRICH, Esq.

Q. As to this later conversation with Mr. Glowenlee, you've said that, as you understood it, Mr. Mookini had been making the charge that you had been getting graft from Mr. Glowenlee, or something of that kind, is that right?

A. He told me, "I understand you're getting some graft from Hurd-Pohlmann."

Q. "I understand you're getting some graft from Hurd-Pohlmann"?

(Testimony of John Edward Cunningham.)

A. I says, "I'm not getting no graft; if there's anybody getting graft, it's you." [438]

Q. Whereupon you charged him with getting graft?

A. I did not charge him; I told him that.

Q. Well, you knew perfectly well that you didn't know anything of the kind, any more than you know the rest of this "camouflaging"; you didn't have reason to believe he was getting graft from Hurd-Pohlmann?

A. No sir.

Q. Why did you say that, then; for the same reason you have been telling these other things?

A. Why sure, he says that to me.

Q. Don't you know that Mr. Glowenlee had gone out to the Camp after you tried to get that $18.00, and complained that they were getting to the point where they couldn't do business with you people without being hounded for a "split"?

A. We had no machine then.

Q. Don't you know that that's what happened; that Mr. Glowenlee went and complained either to Mookini or to Miles to the effect that it was getting to be a pretty bad situation when he couldn't do business without being hounded for a "split"?

A. No sir; he was out there continually, selling sporting goods and everything else out there; we had no machine and at that time had no intention of buying it.

(Testimony of John Edward Cunningham.)

Q. Don't you know that he was the one that made the charge, or whatever it was—not Mr. Mookini?

A. Mr. Mookini made the charge to me; not he.

Q. Don't you know that's what he was talking about, because of the complaint that Mr. Glowenlee had made of your trying to hold him up for a "split" on that meat slicer order?

A. We had no intention of buying a slicing machine out there. [439]

Mr. ULRICH: All right; that's all.

Mr. MOORE: That's all.

HERBERT LLOYD

was duly called and sworn as a witness for the Plaintiff, and testified as follows :

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Herbert Lloyd.

Q. How old are you?

A. 21 years old.

Q. Were you ever a member of the C. C. C. Camp, at Schofield Barracks?

A. Yes sir.

Q. When was that?

A. 1934.

(Testimony of Herbert Lloyd.)

Q. And for how long a period were you out there?

A. Eight months.

Q. What?

A. I was out there for about eight months.

Q. And what particular duty were you assigned to there most of the time?

A. I was a mess officer boy and a cook.

Q. Worked in the kitchen?

A. In the kitchen too.

Q. Do you know Mr. Miles?

A. Yes, I do.

Q. What was he out there?

A. He was the Camp Director.

Q. Do you know Mr. Mookini?

A. Yes sir.

Q. What was he out there? [440]

A. As a lieutenant, at the mess hall, in charge of the "grub".

Q. In charge of the mess—that's the "grub"?

A. Yes.

Q. By that you mean the food?

A. Yes.

Q. Do you know Mr. Cunningham?

A. Yes, I do.

Q. What was he doing out there, if anything?

A. Mr. Cunningham was the chief cook out there.

Q. Do you remember Mothers' Day?

A. Yes sir, I do.

(Testimony of Herbert Lloyd.)

Q. Last year?

A. Yes sir.

Q. Were you out at that Camp?

A. Yes sir.

Q. Did they have anything unusual at all at that time; did they have a party or anything like that?

A. Yes sir, they did.

Q. Do you know Lee Chong?

A. Yes sir, I do.

Q. Where did you first see him?

A. Out at the C. C. C. Camp.

Q. Around Mothers' Day, did you see him around at that time?

A. Yes sir, I did.

Q. Where did you see him?

A. He came with a vegetable wagon around to the back door of the kitchen.

Q. That's of this Camp?

A. Yes sir.

Q. And what did he—what was he doing with the vegetable wagon?

A. They unloaded the vegetables and everything, and there was a little box that was left in the back of the car, and Mr. Lee Chong brought the box and gave it to Mr. Cunningham.

Q. Where was that box put?

A. In the storeroom, sir. [441]

Q. Did it have any writing on it?

A. Yes sir.

(Testimony of Herbert Lloyd.)

Q. What was on it?

A. "Mr. Robert Mookini, please handle with care."

Q. Did you ever see the contents of that box, that is, what was inside of it?

A. There was a boy in the storeroom, he was opening groceries; and this box was in there, so he opened this box up; so Mr. Cunningham went in there and scolded him, "Why you want to open this box; this belongs to Mr. Mookini." So he had half of it out, and it had some straw in there, and it had three quarts of gin and three quarts of whiskey in there, sir.

Q. And did this box stay in the storeroom?

A. No sir; Mr. Cunningham and I, we removed the box about 5 to 5:30 over to Mr. Mookini's tent.

Q. Was Mr. Mookini in the tent when you delivered it?

A. Yes, Mr. Mookini was in the tent.

Q. Did you get a drink out of this gin?

A. Yes, he gave me a shot of it.

Q. When was this?

A. I think that's the day after, sir.

Q. Any flowers come out there that day?

A. Yes; they got not much flowers; I called them a little carnations and a little gardenias; not plenty at all.

Q. What were their colors, if you remember?

A. There was a little white carnations and white gardenias.

(Testimony of Herbert Lloyd.)

Q. Any red flowers at all?

A. I didn't see any red ones; that's all, sir.

Q. After this case started—that is, not the actual trial, but after these men were indicted, did you see Mr. Mookini?

A. Where at, do you mean? [442]

Q. Any place?

A. When—after the delivery——

Q. No, no; after you left the C. C. C. Camp.

A. Yes sir, I did.

Q. Where do you live at?

A. At Kaimuki.

Q. Did you ever see Mr. Mookini at Kaimuki where you live?

A. Yes sir.

Q. And when was that?

A. That was on the 9th of May.

Q. Of this year?

A. Yes sir.

Q. This month?

A. Yes sir.

Q. Have any conversation with him?

A. Yes sir.

Q. What was that conversation, to the best of your recollection?

A. He wanted to know what's the names of the different cooks out there, and he wanted to know Morgan Paris, Harry Nye, Tit Sing Wong, Freeman Onesto, and myself; he asked me if I was going to come up into Court here; I told him I

(Testimony of Herbert Lloyd.)

don't know if I was coming up or anything, I didn't have any sort of papers to come into court or anything of the kind; so he asked me certain kind of questions; I couldn't understand Mr. Mookini so well, sir.

Q. Say anything about his job?

A. Yes, he mentioned about him getting a job at this Territorial Hospital, he was going to be some kind of foreman out there, going to hire men and stuff.

Q. Say anything else about this job?

A. Oh, that he'll get us boys jobs over there.

Q. Get what?

A. Get us boys some jobs over there. [443]

Q. Going back to this day that you got this box of booze that came on that truck, did you see any fresh oysters out there?

A. No sir, I did not see any fresh oysters, sir.

Q. How about spinach?

A. I didn't see any spinach; we only have canned spinach up there, that's the only thing; we never use fresh spinach.

Q. You use canned spinach?

A. Yes sir.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. You say you are 21 years old?

A. Yes sir.

(Testimony of Herbert Lloyd.)

Q. What was your connection with Cunningham out there at that place; what were you doing?

A. I was the mess boy for the officer, and as a cook, sir, too.

Q. Have you talked over with Cunningham what you were going to testify to here today?

A. No sir, I did not, sir.

Q. You didn't?

A. No sir.

Q. You haven't seen Mr. Cunningham or talked to him about this case?

A. Oh no, I seen him a lot of places.

Q. You have seen him?

A. Yes sir, excuse me, I talked about the case; I did; I talked to Mr. De Ville and Mr. Moore.

Q. No, no, I'm talking about Cunningham; has he told you or have you told him what you were going to say here today?

A. No sirree.

Q. You haven't talked to him at all?

A. I talked to him, but he didn't mention about the case. [444]

Q. You have been with him in the hall straight along since this case started?

A. Yes sir.

Q. You have talked about everything except the case?

A. No sir, we didn't even get near the case; he didn't tell me to tell this or that.

Q. I'm not asking you as to whether he asked you what to say, but merely whether you talked

(Testimony of Herbert Lloyd.)

about the case; and as I understand, out there you have been with him every day, day after day, you have talked about everything except about this case?

A. What do you mean to say—about Mookini?

Q. About what happened, about what you were going to say, about whether there was booze?

A. No, we haven't even said something about booze.

Q. You haven't said anything about that at all?

A. No sir; I have that on my own self.

Q. And you haven't even talked to Mr. Cunningham about it?

A. About the booze?

Q. Yes.

A. No sir, I did not.

Q. During all the time you have been standing with him in the hall every morning?

A. No sir.

Q. Did you talk to him about any part of the case?

A. Like about that piece of paper, the day the liquor came in, that Mr. Cunningham took over the piece of paper to him and have him sign when he was eating at the table.

Q. You talked to him about that?

A. Yes sir.

Q. When did you talk to him about that? [445]

A. I can't remember the date, sir.

Q. Mr. Cunningham hasn't threatened that he's going to do something to you if you didn't testify in a certain way in this case?

(Testimony of Herbert Lloyd.)

A. Nothing of the kind, sir.

Q. You've told about the time when you went out to see Mr. Mookini on the 9th of May, haven't you?

A. Yes sir.

Q. You've said that he asked you for the names of the cooks and all that sort of thing?

A. Yes sir, I did, sir.

Q. Did you tell him anything about Cunningham that day?

A. No sir.

Q. Did you mention Cunningham?

A. No sir, I didn't mention Cunningham's name. He wanted to find out things about Mr. Cunningham and Mr. Miles.

Q. But you wouldn't tell him?

A. No sir.

Q. So you didn't say anything about Cunningham?

A. No sir.

Q. You didn't say anything about what Cunningham said he was going to do if you would testify in a certain way in this case?

A. No sir, he didn't tell me that.

Q. But you didn't say anything to Mookini about that?

A. No sir; Mookini was there with a piece of paper, and he was trying to catch me on things, he was questioning about some things; he wanted me to say who told about the liquor proposition.

(Testimony of Herbert Lloyd.)

Q. He wanted you to say who told about the liquor proposition?

A. Yes sir. [446]

Q. What did he say?

A. He wanted me to say if I was going to testify about the liquor proposition.

Q. Did he ask you what you were going to testify to?

A. Yes sir.

Q. Mr. Mookini?

A. Yes sir.

Q. Why didn't you tell that to Mr. Moore when he was questioning you about what was said out there?

A. I couldn't hear him so well; I didn't understand him so well, sir.

Q. As a matter of fact, Mr. Cunningham hasn't said anything to you at all about what you were going to testify to?

A. No sir.

Q. On Mothers' Day out there at the Camp—by the way, had you been particularly working for Mr. Cunningham at the Camp, I mean, more than anybody else; did you help take care of him in any way, act as a sort of valet, something of that sort; do you know what I mean?

A. No.

Q. Take care of his clothes; anything like that?

A. Never.

Q. Never did that?

A. Never took care of his clothes.

(Testimony of Herbert Lloyd.)

Q. Didn't help him in his tent or carry things to him?

A. He didn't have a tent.

Q. Whatever he did have.

A. What do you mean; carry liquor or stuff?

Q. No no, I'm not talking about liquor now; just waiting on him?

A. Only when he was sick, I took three boiled eggs and a [447] piece of toast, that's all, sir.

Q. On this Mothers' Day, or the day before Mothers' Day, you saw Mr. Lee Chong come out there, did you?

A. Yes sir.

Q. Do I understand you to say that you saw a box taken out of his car?

A. Yes sir.

Q. How big a box was this?

A. It was about this size (indicating), and about that wide (indicating); it's something like what you put these plates in, you know, that kind of a box, something like these thin boards what you put —it's a thin box something like balsa wood.

Q. A tin box?

A. A thin box.

Q. Wood box?

A. Yes sir.

Q. What were you doing out there that morning?

A. Me, that morning?

(Testimony of Herbert Lloyd.)

Q. Yes.

A. I was on duty.

Q. What were your duties?

A. My duty was to set the officers' table, and I stayed all night awake to help them pick up things.

Q. What time did the load get out there?

A. I don't know exactly what time; I can't tell you what time.

Q. Generally, was it toward noon, or morning, or afternoon?

A. I can't tell you what time it was; I can't say it was noon or later.

Q. You know very definitely that it was 5:30 when you took this box across the street?

A. Yes sir. [448]

Q. How do you happen to know it was 5:30?

A. Between 5 and 5:30, about that.

Q. Between 5 and 5:30 you took the box across the street?

A. Yes sir.

Q. And you've no idea at all what time the box was received out of the wagon?

A. No sir, I wouldn't have no idea; I didn't look at a watch.

Q. Did you look at a watch when you took the box across the street?

A. Yes sir, I was looking at a watch; I was goin to a show that night.

Q. So you took your watch out?

A. No sir, I didn't take my watch out; there was a watch right there in the kitchen.

(Testimony of Herbert Lloyd.)

Q. So you looked at the watch or clock?

A. It was a clock, yes sir.

Q. What time was it when you looked at the clock?

A. It was about 5:30 or 5.

Q. Then you took the box across the street?

A. Yes sir.

Q. That was when you took the box across the street?

A. Yes sir.

Q. When this load of groceries arrived you didn't look at a clock at all?

A. No sir; I was busy.

Q. Did you see everything that was taken out of that wagon?

A. No, I didn't see everything; there were some K. P.'s carrying the groceries in.

Q. Were you carrying them in?

A. No sir, I was not carrying them in. [449]

Q. The only thing you do remember—can you remember anything else that was taken out except this one little box?

A. Oh, something like potatoes.

Q. You remember seeing some potatoes taken out?

A. Yes sir; it was in back in the lower end of the car, in the back end was where it was.

Q. And the potatoes and the box are the two things you remember?

A. That's all I remember seeing, sir.

(Testimony of Herbert Lloyd.)

Q. When did you find out that Mr. Mookini's name was on this box?

A. When Ting Sing Wong opened the box.

Q. You didn't know when it was taken out of the car, then; you didn't see the box then?

A. Mr. Lee Chong was talking to Mr. Cunningham, sir, and Mr. Cunningham took that into the storeroom, away down in the end of the storeroom there.

Q. I'm asking you when you saw the name of Mookini on the box.

A. Right in black and white; it had black paint on top.

Q. When did you see it?

A. That day.

Q. But not when the box was taken out of the car?

A. When the box was in the storeroom.

Q. And you opened the box?

A. I did not open the box, sir.

Q. The other boy opened the box?

A. Ting Sing Wong opened the box.

Q. Ting Sing Wong opened the box and you saw the different bottles in the box? [450]

A. I did not see; Cunningham called me to come in.

Q. Didn't you see it?

A. Cunningham called me to come in.

Q. I don't care how you got there; did you see it, or didn't you see it?

A. What—the name of Mookini on top?

(Testimony of Herbert Lloyd.)

Q. No, the bottles on top.

A. Sure; they had straw on the top half of it; it was open.

Q. You saw them in the box, then?

A. Yes sir, I did, sir.

Q. What did you mean by saying that you didn't see—or did you say that?

A. I didn't say that; I didn't understand you.

Q. There were three bottles of whiskey and three bottles of gin?

A. Yes sir.

Q. You counted them?

A. Sure, sir.

Q. What kind of whiskey was it, do you know?

A. I don't know the name, sir.

Q. But do you know what kind of gin it was?

A. I couldn't say what kind, but I know the kind of gin he gave me to drink.

Q. What kind?

A. I think it was Manila gin.

Q. That's the kind he gave you to drink?

A. Yes, and I dumped it in the back.

Q. You told us it was in the same bottle?

A. I did not say it was the same bottles.

Q. Did you ever see any liquor in Mr. Mookini's place besides these bottles?

A. Sure; a lot of times, sure. [451]

Q. Did you ever know where he got his liquor from?

A. I don't know where did he get his liquor from; I just remember that day he told me to get

(Testimony of Herbert Lloyd.)

his suitcase full of booze and told me to watch Harry Colman, if you want to know.

Q. Where did you go to get booze in the suitcase?

A. I did not go to get booze in the suitcase; I went to one of the doctors that help the doctor, I went in his tent; he told me go get a suitcase about that size (indicating), and Mr. Mookini laid his liquor in there.

Q. Was that some of this liquor, or other liquor?

A. I don't know if that was some of that liquor, sir.

Q. And you got a drink of gin the next day?

A. Yes sir.

Q. And you didn't see any spinach out there?

A. No sir.

Q. And, so far as you can recall, there were only white flowers.

A. White flowers—carnations and gardenias, sir.

Q. But white ones only?

A. Yes sir, that's all I seen, sir.

Q. I am going to ask you just one more question——

A. Go ahead.

Q. Isn't it a fact that all the time you lived out there and worked out there——

Mr. MOORE: I can't hear you.

A. I can't hear you either.

Mr. ULRICH: Isn't it a fact that all of the time you worked out there at the Camp you lived

(Testimony of Herbert Lloyd.)

in mortal terror of this man Cunningham—he threw knives at you and did all sorts of things? [452]

A. Cunningham throw knives at me?

Q. Yes.

A. Only one time he was mad, he threw an ice pick at me; that don't mean a thing, he didn't even hit me, it just went by me; I was "getting his goat" every day swearing at him and doing everything.

Q. You weren't terrified by this man then, were you; you weren't afraid of him?

A. Who, Cunningham?

Q. Yes.

A. I sure wasn't afraid of him.

Q. You were not afraid of him?

A. No sir.

Q. You knew about what he was and who he was, didn't you?

A. Not Cunningham?

Q. Yes.

A. No sir; you see, I just met him at the Camp when I was out there, sir.

Q. He gave you that drink out there when he asked you to help him pack his suitcase?

A. Who?

Q. Mr. Mookini.

A. No sir.

Q. He didn't?

(Testimony of Herbert Lloyd.)

A. No sir. After May 12th he gave me the drink, the next day.

Q. You don't remember—do you remember Mr. Mookini giving you a drink in October, just before you left the Camp?

A. No sir, I don't remember that, sir.

Q. He didn't do that?

A. No sir, I don't. [453]

Q. You took the bottle and hit it behind Miles then?

A. Who, me—took the bottle and hid it behind Miles?

Q. Yes.

A. No sirree, sir.

Q. Don't you know that's the only time he ever gave you a drink?

A. Who, Mookini?

Q. Yes.

A. He bought me beers, I know that much.

Q. I am talking about gin and whisky—hard liquor.

A. That's the only time, after May 12th, next day he gave me the gin.

Q. That's the only time?

A. Yes, that's all I remember, sir.

Q. Have you ever been on the witness stand before in a courtroom?

A. No sir, this is my first time, sir.

Mr. ULRICH: That's all.

(Testimony of Herbert Lloyd.)

The COURT: One more question. You say you live in Kaimuki?

A. Yes sir.

Q. Did you go to Mookini's house on May 9th, or did he come to your house?

A. He came to my house, sir.

The COURT: That's all.

JAMES R. MAHAFFY

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. James R. Mahaffy. [454]

Q. You are commonly known as "Major" Mahaffy?

A. Yes sir.

Q. In 1934 were you connected with the Civilian Conservation Corps?

A. Yes sir.

Q. Where?

A. At Schofield.

Q. That's on this Island?

A. Yes sir.

Q. In what capacity?

A. Director.

(Testimony of James R. Mahaffy.)

Q. Did you have an assistant director?

A. Yes sir.

Q. Who was he?

A. William E. Miles.

Q. Was there a man out there by the name of Mookini?

A. Yes sir.

Q. And Cunningham?

A. Yes sir.

Q. What was Cunningham's position?

A. Cook.

Q. Mookini's position?

A. Recreation Officer; and along about the latter part of March, in addition to his other duties, Mess Officer.

Q. Prior to Mookini becoming Mess Officer who had that position?

A. Mr. Gibson.

Q. Who appointed Mr. Mookini, if you know, to act as Mess Officer?

A. I did.

Q. And how did that come about?

A. Well, we had an organization planned, first the director, then the assistant director, then on down the line, different ones would be under the assistant director; all duties of the Camp came to me through the assistant director, and all the orders and requests that I wanted went from me [455] through the assistant director to the various ones; and my assistant director Mr. Miles and I talked of the fact that Mr. Gibson—do you want me just to explain?

(Testimony of James R. Mahaffy.)

Q. I just want to know how it happened—if you can give us in brief the reasons for the appointment of Mookini, if there were any.

A. Yes sir, Mr. Gibson as quartermaster was a very busy man, and Mr. Miles and Mr. Mookini and I talked together, and we figured that we would have more efficiency by having Mr. Mookini appointed as Mess Officer, and Mookini and Mr. Miles thought that they could do better in buying and other ways of running the Mess.

Q. Was this appointment made at Mookini's request?

A. Mookini and Miles and I, the three together; we got together there in the office and talked the matter over.

Q. When did this Camp actually start to operate?

A. March 7th.

Q. When you first started where did you purchase your foodstuffs?

A. Through the Quartemaster at Schofield.

Q. Particularly confining yourself to fruits and vegetables, where were those purchased at the inception of the Camp, if you know?

A. Through the vegetable man connected with the Post Exchange at Schofield.

Q. Do you know who that man was?

A. I couldn't say positively his name, no sir; I could refresh my memory from the records and tell you.

(Testimony of James R. Mahaffy.)

Q. Did you keep a monthly record of what took place out there?

A. Yes sir. [456]

(Mr. Moore shows document to Mr. Ulrich)

Mr. ULRICH: I have no objection to this.

Mr. MOORE: Is that the——

A. Yes sir, the council.

Q. That is, this is the "council" book?

A. Yes sir.

Q. Will you look at that and refresh your memory as to the name of the person, if you can.

A. I don't see it on there.

The COURT: To save time, Major; would you know the name if you heard it?

A. Yes sir.

Q. Was it Chun Hoon?

A. Yes sir, that was right; I thought it was, but I wouldn't be positive about it.

Mr. ULRICH: I would like to have that document identified that you referred to.

Mr. MOORE: This is just for the purpose of refreshing his memory.

Mr. ULRICH: That's all right; I want the book to be identified now—I don't know what it is.

Mr. MOORE: It appears to be the record that he stated he thought was in here was not in here, so he didn't refresh his recollection.

Mr. ULRICH: He's identified it as the "council book"; for whatever it's worth let's have it.

(Testimony of James R. Mahaffy.)

Mr. MOORE: Major Mahaffy, what was the book you referred to?

A. That's what we term a "council book"; that's the way we keep the records of the Camp. My signature is on that book.

Q. What is the purpose of this book?

A. To keep our account of where the money goes and where it's expended. [457]

Q. Is it a monthly statement, or a daily statement, or weekly, or what?

A. It's kept monthly.

Q. On a monthly basis?

A. Yes sir; I simply sign it.

Mr. MOORE: I offer this book for identification.

CLERK: Do you want this marked?

Mr. MOORE: Yes.

(Marked "U. S. Exhibit No. 6 for Identification")

The COURT: Mr. Moore, you're offering this book, are you?

Mr. MOORE: No, no; I'm just offering it for identification, that's all, Your Honor. Mr. Ulrich stated he wanted to know what we referred to, and I don't see where it has any particular place in the evidence, but I guess if Mr. Ulrich wants to use anything there with reference to Mr. Mookini I have no objection.

Q. After Mookini was appointed, was there any change that you know of with reference to the place where vegetables were purchased?

(Testimony of James R. Mahaffy.)

A. Mookini was mess officer, and he had a truck, and he used to come to town to purchase where he thought it was better vegetables and, I would say he said, cheaper; however, he had the permission to go to town because we thought that that would be to the best interests of the Camp.

Q. Where did you get the funds to start this Mess?

A. From the Finance Officer at Shafter.

Q. Did you get any advance at all?

A. Yes sir.

Q. Is that set forth here in your council book, or do you know?

A. I don't know; it was properly accounted for —some $500.00, I believe. [458]

The COURT: When you refer to "finance officer" you mean the finance officer of the United States Army?

A. Yes sir.

Mr. MOORE: Showing you this United States Exhibit 6 for Identification, and referring particularly to these pages that succeed what appears to be a form as to how these are to be set out——

A. Yes sir.

Q. What do these items refer to, what are those items?

A. It says here "$475.00"—

Q. Without giving me the items, can you tell us whether that's a statement or account or for any particular period?

(Testimony of James R. Mahaffy.)

A. Yes sir, this for the month of March.

Q. With reference to receipts and disbursements?

A. Yes sir.

Q. And that's with reference to this particular position that you held?

A. Yes sir.

Q. $475.00, is that the amount of the advances?

A. Yes sir.

Mr. MOORE: All right. We'll offer this book in evidence.

Mr. ULRICH: No objection.

The COURT: It will be admitted.

(Marked "U. S. Exhibit L")

Mr. MOORE: That is, I am speaking now particularly of Mr. Mahaffy's statement here.

The COURT: How can this exhibit be identified?

Mr. MOORE: Exhibit "L". Now, referring to this exhibit here, these figures down here, $344.87, appearing at the bottom of the page, what is that? [459]

A. That's the balance carried forward; that means the amount we had over of what I am allowed to spend that month.

Q. In other words, what was left of the money that you received from the finance officer?

A. Yes sir.

Q. Besides this, did you have any goods on hand in the warehouse?

(Testimony of James R. Mahaffy.)

A. Yes sir, we had an invoice, we have another sheet—we did have a sheet showing an invoice of the amount in the storeroom; that's in addition to this $344.87.

Q. Did you ever meet this man Lee Chong—do you know Lee Chong?

A. No sir.

Q. You never met him at all?

A. Not that I know of; I may, but I don't recollect it.

Q. And you had no knowledge of where they were purchashing down town?

A. No sir.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. In other words, Major, the substance of your testimony seems to be, in the first place, that there was a time when it was decided to put Mr. Mookini in charge of the Mess; that was because you thought he could do better than had been done before, is that right?

A. Yes sir.

Q. In addition to that, an order was given to make purchases in town?

A. Yes. [460]

Q. Because you thought perhaps he might do better that way?

A. Yes.

(Testimony of James R. Mahaffy.)

Q. Aside from that, you kept—there was this council book which was kept, is that right?

A. The council book is the book the same as the company commander in the Army must keep; that is the proper way to keep account of Government funds.

Q. That is the company book?

A. Yes sir.

Q. And that's about all you've told us, I guess. You said you didn't know Mr. Lee Chong. Ever remember seeing him before?

A. I didn't recall him by that name; I remember seeing that gentleman before, but I didn't know him by that name.

Q. Do you recall a time when he was out there with Miles and Cunningham, and Mookini came in, and you and Miles and this gentleman were there?

A. No sir, I don't recall that.

Q. You don't recall that?

A. No sir.

Mr. ULRICH: All right; that's all.

Re-direct Examination.

By WILLSON C. MOORE, Esq.

Q. You didn't notice anything wrong with these vegetables while you were out there, that is, before this buying down town started?

A. No sir.

Q. Did you go through the kitchen, or not?

(Testimony of James R. Mahaffy.)

A. Yes, I went through the kitchen and mess room every day that I was there.

Mr. MOORE: That's all.

Mr. ULRICH: Just a moment. [461]

Re-cross Examination.

By BARRY S. ULRICH, Esq.

Q. There was nothing wrong, no suggestion of anything being wrong with the vegetables while you were out there, was there?

A. No sir.

Mr. ULRICH: What's counsel talking about—trying to throw something black on this man's administration?

Mr. MOORE: Not at all.

Mr. ULRICH: I guess it was a mere question. That's all.

(Recess—10:00 to 10:10 a. m.)

FRANK D. GIBSON

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Frank D. Gibson.

Q. And where are you now employed?

A. United States Customs.

(Testimony of Frank D. Gibson.)

Q. Were you ever connected with the Civilian Conservation Corps?

A. I was.

Q. Whereabouts?

A. At Schofield.

Q. In what capacity?

A. As the Camp quartermaster.

Q. And when were you first connected with that organization?

A. In the latter part of January, I think, last year.

Q. Was that at the inception of the Camp, when the Camp started?

A. Shortly before the Camp started, yes sir. [462]

Q. And when the Camp first started did you have anything to do with the purchasing of the foods for the Mess?

A. I did.

Q. Just what did you have to do in that regard?

A. All the purchases were made from the Army.

Q. By whom?

A. By myself.

Mr. ULRICH: Just amoment, if Your Honor please. I haven't objected to a considerable amount of testimony—I don't want to object now except in the interest of justice, I mean, of expediting matters, we ought to have some limit. I don't see what difference it makes what this man did before

(Testimony of Frank D. Gibson.)

the Camp started or about when the Camp started. We've already had the way in which purchases were made; perhaps counsel will indicate the relevancy of the testimony. I don't object to it particularly, except I'd like to carry forward the trial as speedily as possible without too much interruption about so much immateriality. I suggest the immateriality of this line of evidence.

The COURT: These questions seem to be preliminary.

Mr. MOORE: Yes, they are, Your Honor. I just want to show that he did the purchasing from the Army and continued right on through purchasing it from the Quartermaster, and the only things that he did not purchase were the fruits and vegetables and things of that kind, which were purchased down town.

Mr. ULRICH: I'll be glad to admit it; however, I'll withdraw the objection.

The COURT: Mr. Gibson, you said you are now employed by the United States Government?

A. Yes sir. [463]

Q. In what department?

A. United States Customs.

Mr. MOORE: Were you ever relieved as mess officer out there?

A. I was.

Q. And who took over those duties?

A. Mr. Mookini.

(Testimony of Frank D. Gibson.)

Q. After you were relieved and Mr. Mookini took over those duties, did you have anything to do with purchasing at the Quartermaster's whether it be food or anything else, at Schofield?

A. I did, yes sir.

Q. And what did you have to do with them?

A. I had charge of all purchasing in Schofield.

Q. In Schofield?

A. All purchasing in Schofield, yes sir.

Q. Where were the staple goods for the Mess purchased; I mean by that, canned goods and things of that kind, which would not include meat or vegetables?

A. From the Quartermaster.

Q. And you did that?

A. The order was given me and I presented it to the Quartermaster and received it.

Q. And did that state of affairs exist during this whole period that you were there?

A. It did.

Q. When did you leave the Camp of the Civilian Conservation Corps?

A. I believe it was in the latter part of September, the last of September, I think.

Q. And how did you happen to leave, Mr. Gibson? [464]

A. The position that I held as quartermaster was done away with and combined with Recreation Officer—so I was told.

(Testimony of Frank D. Gibson.)

Q. In other words, your position was abolished?

A. Exactly; at least, that's what I was told by Mr. Lloyd.

Q. Do you know a man by the name of Colman?

A. I do.

Q. Did he hold any office out there at this Camp?

A. He was a camp clerk, and later on carried the title of camp adjutant, I believe.

Q. Did you ever have a conversation with Mr. Mookini during the early part of September of last year, wherein the name of Mr. Colman came up?

A. Several times; we lived together, you might say; we stayed out there, and I saw him daily.

Q. Well, bringing it more specifically: Were you ever present at a conversation between yourself and Mr. Mookini where the question of an investigation by Mr. Colman was the topic of the conversation?

A. At one time, yes sir.

Q. When was that, Mr. Gibson?

A. It was—let's see; they had a banquet on a Saturday, I think it was; it was the day after Labor Day; Labor Day came on Monday, and this was on Tuesday morning.

Q. What was the nature of this banquet?

A. The banquet, yes sir; just a dinner.

Q. Do you know what a luau is?

A. Yes, that's what it was.

(Testimony of Frank D. Gibson.)

Q. And where did this conversation take place?

A. In the office out there, and also in the immediate vicinity. [465]

Q. Now, I would ask you to give us that conversation to the best of your recollection.

A. Well, there wasn't much to it; I had been on leave, or, rather, in town over the holidays, and came back late Monday night; and on Tuesday morning I happened to go down to the office or to the mess hall and then to the office, and Mr. Mookini seemed to be at the time rather wrought up at Mr. Colman, saying that he had—which was news to me—that Mr. Colman had started a sort of investigation by himself over the week-end, and that Mr. Mookini seemed to be quite worked up about it—at least, he was kind of mad about it.

Q. Did he say anything about doing anything to this man because of that?

Mr. ULRICH: Well, if Your Honor please, I think we're getting pretty far afield. I have no objection to any conversation in which Mr. Mookini may have said anything to indicate guilt, if that's what the idea is; but in this case there's nothing of that kind so far; apparently it's brought up by somebody carrying on an investigation; just what that means I'm not quite sure; but when it gets to the matter "did he threaten to do anything to him", I object, if Your Honor please; I think—in the first place, it's a leading question; of course the witness has the idea now; and I object to the

(Testimony of Frank D. Gibson.)

examination on the ground it isn't proving anything.

The COURT: The question is leading and suggestive, and the objection will be sustained on that ground. Mr. Gibson, you said that Mookini seemed to be "mad"; just what were the facts from which you concluded he was mad; what [466] did he do or say to cause you to conclude that he was mad?

A. Well, he said he was going to beat him up; he said that he would.

Mr. MOORE: During this conversation was there any telephone calls made?

A. Yes—not during the conversation, no; afterwards.

Q. Well, afterwards, who made the telephone calls?

A. Mr. Mookini and I were in the office, and Mr. Mookini did.

Q. And whom did he call, if you know?

A. He called up the vegetable man in town.

Q. What's his name?

A. Lee Chong, I think—Lee Chong.

Q. And what did Mookini say to Lee Chong in that conversation?

A. He said that there was a company clerk out here that was carrying on an investigation and that for him not to do anything or say anything until he, Mr. Mookini, had seen him; or words to

(Testimony of Frank D. Gibson.)

that effect, I don't quite remember; I didn't pay an awful lot of attention.

Mr. MOORE: You may cross-examine.

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. Passing over the fact that you bought groceries in a certain way, I understand this other thing is merely this; that Mookini came to you one time and told you that the company clerk was carrying on some kind of an investigation and that he was going to beat him up; is that what you told the Judge?

A. Yes sir.

Q. And then you heard him call up Mr. Lee Chong in town and tell him that this clerk was carrying on an investigation and not to do or say anything until he had seen him, [467] or something of that kind?

A. Words to that effect, yes sir.

Q. That all happened on one day, did it?

A. Yes sir, in the morning.

Q. What the investigation was or the connection of Lee Chong to it or anything of that kind you didn't know and you didn't say anything about at the time?

A. Yes sir.

Q. And this was in September, did you say?

A. I believe so; it was the day after Labor Day.

(Testimony of Frank D. Gibson.)

Q. The day after Labor Day?

A. I think it was on a Tuesday.

Mr. ULRICH: That's all.

Mr. MOORE: That's all.

HARRY M. COLMAN

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Harry M. Colman.

Q. Were you ever connected with the Civilian Conservation Corps at Schofield Barracks?

A. Yes.

Q. When?

A. Between January and October, 1934.

Q. In what capacity?

A. Clerk and adjutant.

Q. Where did you get your meals? [468]

A. I got them for some time at the Camp mess; about the last three months I ate outside.

Q. Why did you eat outside the last three months for?

A. Because I didn't like the mess that they were serving there.

(Testimony of Harry M. Colman.)

Q. What was the matter with it?

A. I didn't like the way the meals were made up; I didn't like the food.

Mr. ULRICH: If Your Honor please, we've had some much evidence come in here that's totally irrelevant; what difference does it make whether this man liked the mess out there?

Mr. MOORE: He said it was no good.

Mr. ULRICH: I submit it's entirely irrelevant, incompetent, and immaterial. (argument).

The COURT: The Court doesn't see the relevancy, Mr. Moore, of whether this man liked the food or whether he didn't.

Mr. MOORE: Very well; I'll not proceed any further with that.

Q. In September, that's after this luau, did Mookini ever have a conversation with you with reference to making any investigation?

A. Yes, he did.

Q. Where did that take place?

A. It took place, I believe, in the office, at my desk. He came and said that he had spoken to Miles and to Gibson—I think he said, the doctor—and talked over with them the fact that I had made an investigation, he had been told that, and he said, rather than to fight it out with me, which he intended to do, he would rather talk to me "man to man"; and he asked me whether I had made an investigation, and I said I hadn't.

Mr. MOORE: That's all. [469]

(Testimony of Harry M. Colman.)

Cross Examination.

By BARRY S. ULRICH, Esq.

Q. He asked you whether you had been investigating, and you said you had?

A. I said I hadn't.

Q. You had not?

A. I had not.

Mr. ULRICH: That's all.

Mr. MOORE: Call Captain Baldwin.

The COURT: Is this a witness who can be heard in a short time?

Mr. MOORE: I don't know; it may take some time, Your Honor.

The COURT: Well, we'll get started, anyway.

Mr. MOORE: Very well.

CAPTAIN HERBERT BALDWIN

being first duly sworn as a witness for the Plaintiff testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq.

Q. What is your name, please?

A. Herbert Baldwin.

Q. You are an officer of the United States Army?

A. Captain, of the Finance Department, United States Army.

(Testimony of Captain Herbert Baldwin.)

Q. Stationed where?

A. Fort Shafter, Territory of Hawaii.

Q. Have you any comection, in your capacity as finance officer—withdraw that question.

During the year 1934, in your capacity as finance officer, did you ever have any connection with the Civilian Conservation Camp?

A. I did, yes sir. [470]

Q. With that one located at Schofield Barracks?

A. Yes sir. I am the fiscal agent for the Civilian Conservation Corps, duly appointed by law.

Q. Do you know whence the Mess Fund for the Camp of the Civilian Conservation Corps at Schofield Barracks was derived?

A. Derived from appropriated moneys entrusted to my care from the Treasury Department through the Chief of Finance of the War Department.

Q. Did it have any connection with the Department of the Interior?

A. Yes sir; the funds are transferred after they are appropriated by Congress, they are transferred from the Department of the Interior to the War Department pursuant to executive order of the President.

Q. For this particular purpose?

A. For this particular purpose.

Q. Do you know Captain William E. Miles?

A. I do, yes sir.

Q. In 1934 did he have anything to do with the Civilian Conservation Corps?

(Testimony of Captain Herbert Baldwin.)

A. He was appointed Director of the Civilian Conservation Corps Camp at Schofield Barracks.

Q. Did you ever pay him any of these funds that you've just spoken of?

A. I did, yes sir.

Q. And when would you pay him these funds?

A. These funds were paid on an approved voucher certified to by Mr. Miles, authenticated by Mr. Lloyd, and approved by the Governor of the Territory of Hawaii. [471]

Q. And the amount of the money turned over was based on what?

A. It was based on the strength of the Camp, at 50 cents a day, which was the value fixed by the Secretary of the Interior as the ration value per man per day.

Q. For the——

A. Month.

Q. When is this money paid, that is, before, during, or after the month it is computed?

A. It is paid after the month it is computed.

Q. At the end of the month of June of last year did you pay any of these funds to William E. Miles?

A. I did, yes sir.

Q. And that was for what—to cover what month?

A. May, 1934.

Q. And how much money did you pay him?

(Testimony of Captain Herbert Baldwin.)

A. (after consulting memorandum): On my voucher Number 232, dated June 5th, 1934, which was certified to by William E. Miles, approved by Mr. Lloyd, and signed by Raymond C. Brown, Acting Governor, for $2,938.50, which is covered by check No. 55,384 on the Treasury of the United States, dated June 5th, 1934, payable to Camp Director C. C. C. Camp, Schofield Barracks, T. H., which said check has been presented to the Treasury Department, duly endorsed and paid.

Q. Did you pay any funds during the month of October, as you've just related you did in the month of June?

A. (after consulting memorandum): My voucher No. 257, dated October 4th, 1934, certified to by William E. Miles, Camp Director, approved by J. W. Lloyd, approved by J. B. Poindexter, Governor of the Territory of Hawaii, for $2,408.56, which was paid by check No. 493184, dated October 4th, 1934, on the Bishop National Bank of Hawaii, [472] at Honolulu, United States depository, payable to Camp Director, C. C. C. Camp, Schofield Barracks, Territory of Hawaii, which said check has been presented to the United States depository and paid.

Q. Now, these funds that you pay out can be used by the camp director for what?

A. The purchase solely of food.

Q. Captain Baldwin, how long have you been in the United States Army?

A. Going on 18 years.

(Testimony of Captain Herbert Baldwin.)

Q. How long have you been in the finance department of the United States Army?

A. Since July 1st, 1920.

Q. Are you familiar with the regulations which govern the purchase of food for the Camps of the Civilian Conservation Corps?

A. I am, yes sir.

Q. And where, under and by virtue of those regulations should the food be purchased?

A. From the Quartermaster Corps, the Post Exchange, or its authorized instrumentalities. By "Quartermaster Corps" I mean what is commonly known as the Commissary.

Q. Are there any instances, Captain Baldwin, where under the regulations the purchases should or could be made elsewhere?

A. None that I know of, except when the necessary supply is not on hand, in which case they must have a certificate from the Quartermaster certifying that that article is not for sale by the Quartermaster Corps. [473]

Q. Now, Captain Baldwin, in the event that there are funds such as these that you were testifying to that have not been expended, what becomes of those?

A. They are turned back to the finance——

Mr. ULRICH: Just a moment. I haven't objected before—to the observance of rules and regulations of departments, that this man talked of

(Testimony of Captain Herbert Baldwin.)

from 18 years experience, I don't know where, it couldn't have been the Civilian Conservation Corps because it hasn't been going on that long—because I didn't want to unduly curtail the examination; but, if Your Honor please, I do submit that this particular line of testimony is irrelevant and immaterial and has no bearing on the issues of this case; it is the first I have had an intimation to the effect that aside from proving some sort of offense against these defendants they are now branching out, claiming some kind of offense committed by Mookini and everybody I suppose because they went outside the Camp and purchased goods in Honolulu. If that's an offense, I don't know; it has no place in this case because there's no charge based on anything such as that. The propriety of going outside the Camp and purchasing these goods away from the Quartermaster is certainly not an issue before this Court in this case. If it be true that it is an inflexible rule of the department, or whatever he's talking about from this 18 years experience, that they should only purchase from the Quartermaster Corps, we're not concerned about that or a violation of that rule here, and it has no bearing on the issues of the case at all; and I submit it's incompetent, irrelevant, and immaterial. [474]

Mr. MOORE: I think, Your Honor, that the question before the Court at this time is what be-

(Testimony of Captain Herbert Baldwin.)

comes of the funds that are unexpended which have been turned over to the camp director of the Civilian Conservation Corps.

Mr. ULRICH: That is the question, if Your Honor please; I thought it was another question on the same line. Then my position should be made clear in a motion to strike the testimony of this witness as to the rule against purchases outside or away from the Quartermaster Corps, as immaterial and irrelevant to any of the issues of this case. I make such a motion.

Mr. MOORE: We resist the motion, Your Honor.

The COURT: What claim do you make for the testimony?

Mr. MOORE: The claim for the testimony is this, Your Honor: It has been testified—I do not wish to argue the case in the presence of the jury or the proposition. If the Court wants to excuse the jury—it's practically time to quit now, anyway—and I can make my position clear, because I do not think that argument of the facts should go before the jury until this case is finally concluded.

The COURT: The Court has no hesitancy in saying that a purchase of these goods from someone not authorized is not charged in this indictment and will not be permitted to be considered by this jury as a crime.

Mr. MOORE: Well, may it please the Court, I would like to have an opportunity, before Your

(Testimony of Captain Herbert Baldwin.)

Honor makes the ruling finally, to set forth my position and my reasons for producing such evidence, and I believe that if I am given an opportunity to do that, that Your Honor can see the relevancy and the materiality in this case. [475]

Mr. ULRICH: That need not interfere with the progress of the hearing at this time and hold this witness and make the jury be dismissed and come back, and all that sort of thing. If counsel has anything he wants to say, let him say it when the jury is gone, but let's finish with this witness; there's not even going to be a cross-examination, and he'll be through and we can go ahead; then if he wants the Court to hear an argument on the motion to strike the evidence, and the Court will rule for or against the motion, we can argue it at that time.

Mr. MOORE: Do you recall the question I asked, of what became of those funds when they were unexpended?

A. They are returned to me as fiscal agent and I place them in a special deposit account until such time it's been ascertained that no further outstanding liability exists against this fund, whereupon these funds are deposited to the credit of the Treasury of the United States.

Q. In other words, these funds in the hands of the director always are Federal funds?

A. They are, yes sir; they do not lose their identity.

(Testimony of Captain Herbert Baldwin.)

Mr. MOORE: You may cross-examine.

Mr. ULRICH: No cross-examination; that's all.

The COURT: Gentlemen of the jury, at this time we'll adjourn until nine o'clock tomorrow morning. Remember carefully the admonition heretofore given you about discussing this case or permitting anybody to talk to you about it.

Mr. MOORE: If Your Honor will excuse the jury, I might state my position, if Your Honor wants to take it up at this time; or we can take it up in chambers at ten minutes to nine, before the case convenes. [476]

The COURT: Whatever time is most convenient to counsel.

Mr. ULRICH: It would be convenient to me right now, if Your Honor please.

The COURT: The jury will be excused until tomorrow morning at nine o'clock.

(Jury dismissed—11:45 a. m.)

Mr. MOORE: My position is this, may it please the Court, in that connection:

The testimony here shows that Robert Mookini not only was Mess Officer out here, but he was a reserve army officer, and the regulations with reference to purchasing goods at the Commissary are things that he, holding such position, should know; and we contend that it bears upon the reasons for going elsewhere from the Commissary. This is the thing; out there at the Commissary it's a

(Testimony of Captain Herbert Baldwin.)

pretty hard thing to pad any bills—it's next to impossible; therefore the purpose of the changes, which are again what he as a reserve officer should know; and we contend for the value of that testimony as along those particular lines. We're not contending, may it please the Court, that the mere fact that he went out and bought goods elsewhere was a crime in itself, because it isn't a crime; it's a violation of the regulations, but it is not a crime; and that was the purpose of calling for that evidence.

Mr. ULRICH: I still submit that it's totally irrelevant and immaterial. The evidence in the case of Major Mahaffy and Mr. Miles and everybody else is to the effect that it was decided by the authorities out there—not by Mookini, but by his superiors,—that the purchases should [477] be made in town. Now, whether or not Mr. Mookini acquiesced in the wishes of his superiors and did that thing, or did it of his own accord, has nothing to do with the case as to any of the facts which have to do with the case. It certainly doesn't show such guilty conduct as to color the testimony about his conduct or suggest the probability of guilt with respect to any other things. As counsel says, at most it would be a violation of regulations, with full knowledge of everybody concerned. I submit it's burdening the jury with a lot of foreign thoughts; we have too many already which really

(Testimony of Captain Herbert Baldwin.)

don't have a bearing on the case at all. I submit the motion to strike should be granted.

The COURT: Just what do you direct your motion to? Certainly not to all of his testimony?

Mr. ULRICH: I direct it to the evidence of the witness to the effect that the rules of the department—I don't even know just what he was talking about—what was it?

Mr. MOORE. The regulations are, that——

Mr. ULRICH: Regulations of what?

Mr. MOORE: The Army regulations which are applicable to the Civilian Conservations Corps——

Mr. ULRICH: All right, then, that's the motion, to the fact that Army regulations are to the effect that purchases may not be made outside the Government sources, that is, the Quartermaster Corps, and it was along that line.

The COURT: The defendant's motion to strike is allowed.

(Adjourned—11:50 a. m.) [478]

[Title of Court and Cause.]

The above entitled matter came duly on for further trial at 9:00 a. m. on Friday, May 17th 1935; the Plaintiff appearing by Assistant United States Attorney Willson C. Moore; the defendants being present with their respective counsel;

(Testimony of Charles I. Deville.)

WHEREUPON, the following further proceedings were had and testimony adduced:

Mr. MOORE: Ready for the United States; stipulate the jury is present.

Mr. ULRICH: We are ready for the defendants, Your Honor.

The COURT: Do you stipulate that the jury are present, Mr. Ulrich?

Mr. ULRICH: Yes.

The COURT: Let the stipulation be entered.

CHARLES I. DEVILLE

was duly called and sworn as a witness for the Plaintiff, and testified as follows:

Direct Examination.

By WILLSON C. MOORE, Esq. [479]

Q. What is your name, please?

A. Charles I. Deville.

Q. Your business?

A. Agent, Secret Service Division, Treasury Department.

Q. United States Government?

A. Yes sir.

Q. And in such capacity did you conduct an investigation in this case?

A. I did.

Q. Do you know a Mr. Roque?

A. I do.

(Testimony of Charles I. Deville.)

Q. And where is he employed?

A. He is employed as assistant manager of the Lee Chong Company at Aala Market.

Q. Is that the same Company that we've been talking about throughout this trial?

A. It is.

Mr. ULRICH: This is this witness' understanding of his relationship?

Mr. MOORE: Yes.

Mr. ULRICH: He thinks he's assistant manager, is that it?

Mr. MOORE: Upon what do you base that statement that he is assistant manager of that Company?

A. He receipted some C. C. C. vouchers as "assistant manager" for the Lee Chong Company.

Q. And that is the basis for your statement?

A. Yes; he may not be now, sir.

Q. Showing you United States Exhibit "B"; where did you first see that, Mr. Deville?

A. This particular voucher I received from Mr. Lloyd of the E. C. W., I feel quite sure that I did there. [480]

Q. And United States Exhibit "D"?

A. I received that from Mr. Roque at the Lee Chong Company.

Q. Did you receive any others of these vouchers that have been introduced in evidence, from Mr. Roque? Will you look those over. That is United

(Testimony of Charles I. Deville.)

States Exhibit "D" you received from Mr. Roque?

A. Yes, that's correct.

(Mr. Ulrich examines documents at the witness-stand. Witness looks over various documents).

A. I believe I received the original September 1st voucher, Exhibit "G", from Mr. Roque.

Q. And then you received other vouchers, did you not, that are not in evidence?

A. That's correct.

Q. Now Mr. Deville, during your investigation did you ever have any conversations with Mr. Lee Chong?

A. I did.

Q. When did you first see him with reference to this indictment?

A. On October 25th, 1934.

Q. Whereabouts?

A. On King Street, near Alakea.

Q. Did you have any conversation with him at that time?

A. Yes; I told him I was a Federal officer and I wanted to interview him, and he told me to see him later.

Q. Did you see him later?

A. I did.

Q. When did you see him?

A. With specific reference to these vouchers, I saw him the following day at his office in Aala Market.

(Testimony of Charles I. Deville.)

Q. Who was present? [481]

A. Mr. Tom Hoon, Government interpreter for the Immigration Service, Mr. Roque, Mr. Lee Chong, and myself.

Q. Calling your attention to United States Exhibit "D" that you've said that you received from Mr. Roque, did you have any conversation with reference to that particular voucher; that is, the voucher I'm speaking of is the one that is the substitute for Exhibits "B" and "C", Exhibits "B" and "C" being the ones that have the paper plates, cups, napkins, strawberries, crab, opelu, nuts, candies, and 400 pounds of pumpkin; did you discuss that?

A. Yes, I did. However, I didn't show them the voucher nor the photostat of it on this date.

Q. What was your discussion at that time?

A. With reference to this United States Exhibit "D", Mr. Lee Chong stated that the oysters and the strawberries listed on the invoice——

Mr. ULRICH: Just a moment, if Your Honor please. Why not have this come in in a regular way. I am doubtful—I don't believe the law makes it proper for the witnesses other than the defendants themselves to testify to statements and conversation made by the defendants unless the Court can see from the proposed evidence, after indicated to the Court, that it's tantamount to a confession of guilt. Of course, nothing has been said

(Testimony of Charles I. Deville.)

by Mr. Lee Chong, as I understand the facts, that was tantamount to a confession of guilt on the part of this witness. I don't know what the man is going to testify to now, but unless there is an offense to testify to, a confession of guilt, I don't believe that a conversation in which the defendant's testimony is given can properly come in in this way; then the defendant can properly be called, if he is called to testify [482] and will tell what the facts are himself. I don't believe that you can involuntarily and indirectly get his statements before the Court in this case unless it comes in, as I say, under an exception to the rule, which would be as a confession of guilt, and in that event it would have to be shown to the Court's satisfaction that it was such a confession.

Mr. MOORE: I submit, may it please the Court, that the statements to which this witness is about to testify are in the nature of confessions, and further than that, admissions against interest.

Mr. ULRICH: (Argument).

Mr. MOORE: I have no objection, may it please the Court, to making an offer of proof in the absence of the jury; I am perfectly willing to do that; and if Mr. Ulrich feels he would like to know exactly what I want to prove by this witness, I'll ask that the Court excuse the jury temporarily and I'll make such an offer.

The COURT: However, before that is done, the Court now recalls that at the time the jury were

(Testimony of Charles I. Deville.)

excused yesterday there was a motion to strike a portion of the evidence of the last witness, Captain Baldwin, under consideration. Gentlemen of the jury, in ruling upon that motion the Court ruled that the testimony of Captain Baldwin relative to the regulations as to where foodstuffs should be bought should be stricken from the record, which means that you are not to consider that testimony. The jury will now be excused temporarily until this matter is determined.

(Jury retire from courtroom—9:17 a. m.)

Mr. MOORE: We offer to prove by this witness, may it please [483] the Court, that on October 26th of last year he was down at Lee Chong's store, and there was questioning Lee Chong about various matters concerning this investigation, and particularly with reference to United States Exhibit "D", which is the voucher of May 12th; that he asked Mr. Lee Chong which of the items were "phoney" or weren't properly listed upon the voucher, and that thereupon Mr. Lee Chong called Mr. Roque and stated, "Well, Roque knows what they are and he'll point them out"; and that there in the presence of all these persons Mr. Roque called off these various items which were not goods that were delivered but were listed upon the voucher, they being: 500 oysters, 4 cases apples, 400 pounds pumpkin, 400 pounds spinach, 400 pounds squash, 40 pounds lima beans; and then

(Testimony of Charles I. Deville.)

that thereafter he stated that the item of oysters, $17.50, and that the item of strawberries, $6.25, covered the item of "flowers" in the sum of $23.75 that were delivered—there was some question about pumpkin—and that the balance covered the limu and opae, and nuts and candies, and so forth. We want to show that he also discussed with Mr. Lee Chong the items upon United States Exhibit "G", in the same manner, and that Mr. Roque, at Mr. Lee Chong's request, called off the items that were not delivered but were listed upon the voucher, setting forth that there was 25 pounds yams, 6 cases honey dew melon, 300 pounds pumpkin, 10 pounds mushrooms, 15 gallons mayonnaise, and that he said those items covered the items listed in United States Exhibit "J", which are keawe wood, chicken wire, empty bags, rent for chairs, paper plates, napkins, cups, bowls and spoons, cigars and cigarettes, Hawaiian pudding, and flower leis; that he stated that the [484] corrected bill was made up at the request of Mr. William E. Miles; that United States Exhibit "H", which is a correction of United States Exhibit "G", was made up at the request of Mr. Miles, and that United States Exhibit "J" was billed separately at the request of Mr. Miles, which is in the sum of $72.50; that he interviewed or attempted to interview Mr. Mookini at Schofield Barracks on October 17th, and that Mr. Mookini refused to

(Testimony of Charles I. Deville.)

give him any information whatsoever, stating that Mr. James W. Lloyd, who is the head of the C. C. C., had given him instructions not to say anything, and that thereupon Mr. Deville called up Mr. Lloyd and asked him about it, and the telephone was passed over to Mr. Mookini, and after a conversation with Mr. Lloyd Mr. Mookini stated that Mr. Lloyd had stated it was perfectly all right for him to tell Mr. Deville all about this thing; and then after that, that Mr. Mookini said still he wouldn't talk about it, he woudn't say anything until after he had seen counsel.

Mr. ULRICH: We have two very different and distinct offers there from the Government.

Mr. MOORE: I thought I'd make them at the same time.

Mr. ULRICH: Insofar as the first thing is concerned, if the Court please, I think that the way the offer has been made indicates the vice of allowing testimony to come in in that way. Counsel has said that he offers to prove that Mr. Lee Chong in the first place said—he didn't say it himself, at all, so far as that's concerned, but called his bookkeeper to tell Mr. Deville here what goods hadn't been delivered on some bill; then the latter part of the testimony indicates that that also was coupled with a [485] statement that he never had delivered those goods, that they were on the changed bill and that they represented other goods which Mr. Miles

(Testimony of Charles I. Deville.)

—I believe this witness is going to say—alone had directed the change. Now, there might or might not be an offense involved in things of that kind. Mr. Lee Chong, of course, has no connection with the United States Government at all; he has nothing to do with the way they charge their bills or handle their account after they are turned in there; and if one of the officers of the Camp having in charge both Government funds and other funds comes to him and orders him to present his bill in a certain way, that would certainly not be evidence of any intent on Mr. Lee Chong's part to commit fraudulent acts so long as he didn't seek to gain any advantage or defraud the Government in any way; and there isn't the slightest suggestion, so far as this offer is concerned, of intent to charge more money than should be, or anything else, except making his listing in ways unadvantageous to Mr. Lee Chong desired by them to have the bills presented. So that, you don't show any crime, you don't show any confession of guilt, by showing that Mr. Lee Chong acquiesced in the request on the part of Miles or Cunningham—and I believe Mr. Miles is the only one suggested here—to list certain edibles as non-edibles, presumptively for the reason of permitting him to charge against one account or another, there being certainly nothing in the nature of a presumption that he was going to commit a crime or was to improperly charge it

(Testimony of Charles I. Deville.)

against the Government or otherwise which would support a contention that Mr. Lee Chong was a party to that crime. [486] I submit, if Your Honor please, that it is not a confession of guilt, and that the defendant should be entitled to give his own story here on the witness stand unhampered or unaffected by any version of the story as heretofore given. Perhaps, after he has given it, if his story is not such as Mr. Deville has formerly had told him, then we come into a very different field of evidence, namely, the showing of prior contradictory statements or material to impeach his testimony; but as a matter of independently showing at this time with a view to showing guilt or innocence of the defendants, I submit that the offer does not amount to a confession; that it can't come in under the criminal laws as an admission against interest, and that it can only properly be resorted to in the event that the defendant's own testimony might lay him open to impeachment, to the showing of prior contradictory statements.

Mr. MOORE: (Arugment) * * * Now, in showing the intent of this person to be a joint party to the presenting of false vouchers, it's certainly of the utmost importance to show that he knew when these bills went out that they were false, fictitious, and fraudulent, and they did not purport to be honest in their items. We're further entitled to show the man's demeanor; and we submit, may

(Testimony of Charles I. Deville.)

it please the Court, that this evidence is pertinent, relevant, proper, and admissible.

Mr. ULRICH: (Argument).

The COURT: The Court understands from your argument, Mr. Ulrich, that when you refer to "first part" and "second part", by the "first part" you mean the offer as to Lee Chong?

Mr. ULRICH: Yes, Your Honor. [487]

The COURT: And by the "second part", the offer as to Mookini?

Mr. ULRICH: Yes, Your Honor.

The COURT: Now, this is true, that this is not a confession of guilt as we often have presented before courts in cases of this character, where a defendant has made a detailed confession, perhaps signed, perhaps simply oral. But the Court holds that it is the law that facts admitted, of a kind that are material to the issues, may be shown by way of admissions; and it's far more fair for the Government, if it intends to present such matters, to present them in its case in chief and thereby give the defendants a proper opportunity to meet them, than it would be to permit the defendants to make statements and then come in by way of rebuttal to contradict them. There is much force, however, in the statement relative to what has been offered as to Mookini; a defendant cannot be compelled to testify against himself, and if a defendant does not elect to take the stand it

(Testimony of Charles I. Deville.)

is a matter that may not even be commented upon in argument before a jury. So it appears that the fact that when the defendant was asked he refused to talk is of itself a matter that is in no way material or proper. If, however, the defendant Mookini did make any statements bearing upon the facts of this case, to this witness, those statements and the circumstances under which they were made may be shown. At this time I want to call attention to a little matter of the use of a word again; in the testimony yesterday and again today the term "corrected bill" has been used, where I believe it should be changed to "changed", as Mr. Ulrich did, or "modified". "Corrected" would imply that it was erroneous [488] and that afterwards the errors were stricken out and correct statements were submitted. That is clearly not the intent or thought, but that certain items were modified. So I would suggest, if counsel agree with me, that in the future in referring to this matter it be referred to as "modified" or "changed" rather than "corrected".

Mr. MOORE: Very well, Your Honor.

The COURT: You may call the jury.

Mr. ULRICH: May I just take the ruling and make an exception at this time. I understand that the Government's offer of proof with respect to Mr. Lee Chong is granted; to which we except.

The COURT: The exception may be noted.

(Testimony of Charles I. Deville.)

Mr. ULRICH: And that the offer to prove with respect to the statement, or refusal to make a statement, of Mr. Mookini is denied.

The COURT: That is correct.

(Jurors return to courtroom—9:38 a. m.)

Mr. MOORE: Please read the last answer, Mr. Reporter.

(Reporter reads uncompleted answer, page 252, as follows: "With reference to this United States Exhibit 'D', Mr. Lee Chong stated that the oysters and the strawberries listed on the invoice——")

A. (continuing): had not been sent to Schofield Barracks, but, instead, flowers were sent. He stated that this camouflage was at the request of Mr. Cunningham and Mr. Mookini on or about May 10th or 11th; that Mr. Cunningham told him that, according to Army regulations, various articles that were not eatables could not be charged to the Mess Fund. [489]

Q. Were there any other articles on that particular exhibit pointed out as not having been delivered?

A. Well, not on October 26th; this was in a later conversation with Mr. Lee Chong.

Q. And when did that later conversation take place?

A. I would say about two or three days later, at which time I brought in a photostatic copy of the vouchers.

(Testimony of Charles ~~I.~~ Deville.)

Q. Of which vouchers?

A. Of the May 12th and September 1st vouchers.

Q. I'll show you the May 12th vouchers that we have here; which one of these vouchers was it, Mr. Deville, a photostat of which?

A. A photostat of this one (indicating).

Q. That's a photostat of United States Exhibit "D"?

A. That's correct.

Q. And who was present at the time, Mr. Deville, at Mr. Lee Chong's?

A. Mr. Roque, Mr. Lee Chong, myself, and I'm not certain whether Mr. Tom Hoon went with me on this occasion or not; I believe that he did.

Q. What other articles were pointed out to you on that bill as not having been delivered?

Mr. ULRICH: Which exhibit are you referring to?

Mr. MOORE: Exhibit "D".

Mr. ULRICH: Which is the changed bill?

Mr. MOORE: Yes.

A. I asked Mr. Lee Chong which of the items on that particular invoice were not delivered, and he said, "Roque can tell you better, he's the one that filled these up"; and he called Roque in and he told Roque to point out to me which [490] articles were not delivered, and Mr. Roque pointed out the items.

Q. As he pointed out these items did you do anything in particular?

(Testimony of Charles I. Deville.)

A. Yes, I made a check mark on the photostat; he pointed out the item of 500 oysters, he pointed out the item of 400 pounds pumpkin; and when he done that Mr. Lee Chong said "Now Roche, you know that that was delivered", and they had some conversation back and forth, upon the conclusion of which Mr. Roque said, "Well, I'm probably mistaken about the pumpkin". He picked out the item of 400 pounds of spinach, he picked out the item of 400 pounds of squash, the item of 400 pounds of lima beans, which were not questioned by Mr. Lee Chong.

Q. Was there anything said about what these items covered, excluding the pumpkin?

A. Yes sir.

Q. What was said in that regard?

A. It was said again at this time that the oysters covered the flowers, and that the other items covered certain items which had been eliminated from the original invoice; by that I mean the first invoice that was delivered to the Camp.

Q. Did you have the first invoice with you at that time?

A. I had a photostat of it.

Q. And that invoice that you speak of—showing you United States Exhibit "C"—is that it?

A. I believe it was a photostat of the one with the lines on, Mr. Moore.

(Testimony of Charles I. Deville.)

Q. That's United States Exhibit "B"?

A. That's correct. [491]

Q. And what items on there do you refer to as being covered by these other things; now we're not talking about the flowers; the other things you were talking about?

A. The items that the lines are drawn through.

Q. Will you name those off, please?

A. 200 paper plates, 1000 napkins, 25 baskets strawberries, 12 pounds of crab——

Mr. ULRICH: I understand the witness is saying these are the items Mr. Lee Chong told you were delivered but were listed by these other items you've already given?

A. Mr. Roque; that's correct.

Mr. ULRICH: He's giving the items that were delivered—paper plates and such things; isn't that right?

A. That's correct. 200 paper plates, 1000 napkins. With reference to this item of strawberries, this is rather confusing, because although the strawberries had been entered on the first voucher, Mr. Lee Chong had previously stated that they were not delivered. However, they were eliminated from that first voucher just the same. 12 pounds of crabs, 3 rolls of limu, opae, dried opelu, 50 pounds mixed nuts, 65 pounds candy, one box after-dinner-mints. He stated that this particular voucher was changed at the request of Mr. Mookini

(Testimony of Charles I. Deville.)

and Mr. Cunningham on or about Monday the 14th of May; that they came to his office with the request that he change that, although they didn't specify how, but that he changed it into items of foodstuffs because these items could not properly be charged to the Mess.

Mr. MOORE: Did you on these occasions have any conversation about the various vouchers of September 1st? [492]

A. I did.

Q. Here are the vouchers of September 1st; will you pick out the vouchers that you had a photostat of that you talked to him about?

A. Yes; United States Exhibit "G", Exhibit "H", and Exhibit "J".

Q. Exhibit "H"——

A. "G", "H", and "J".

Q. All right; take one at a time; start with "G". Now, with reference to Exhibit "G"?

A. With reference to Exhibit "G", Mr. Roque stated, in Mr. Lee Chong's presence and at Mr. Lee Chong's order, that of the 50 pounds of California yams billed 25 pounds were delivered; that 6 cases honey-dew melons were not delivered; 300 pounds of pumpkin were not delivered; 10 pounds dried mushrooms were not delivered——

Mr. ULRICH: Just a moment. I think this is very misleading, continually stating that these "were not delivered", These are the items, the

(Testimony of Charles I. Deville.)

evidence is, that were placed there in the place of certain goods that were delivered; of course these weren't delivered; but that gives the impression to the jury that these were charged for and paid for; as a matter of fact, these other things were delivered and furnished the consideration for the payment that was received. If you'll have him testify that these were items that were put there in place of——

Mr. MOORE: I am trying first to bring out the articles in this particular voucher that were not delivered, and then I'll later show the other two vouchers, which are "J" and "H", how it was split up. [493]

Mr. ULRICH: To show what was delivered?

Mr. MOORE: Yes.

Mr. ULRICH: All right.

Mr. MOORE: Now, how was this voucher charged, if you know?

A. Mr. Lee Chong stated that this voucher was made out and rendered at the request of Mr. Cunningham and Mr. Mookini prior to September 1st, that it was their instructions, and that they had stated to him it was Mr. Miles' orders, and that the United States Exhibit "G" was so rendered and was signed for by Mr. Cunningham; and that on or about October 6th Mr. Miles brought in that particular invoice or a copy of it and asked that the items that were not delivered but were put on the original invoice as something else be stricken

(Testimony of Charles I. Deville.)

from the list, that a true bill be rendered him and that another separate bill be rendered for the kaewe wool, chicken wire, paper plates, and so on.

Q. Is that separate bill there?

A. It is.

Q. And that is what exhibit?

A. Exhibit "J".

Q. Now, that kaewe wood, chicken wire, empty bags, rent for chairs, paper plates, naukins, cups, bowls and spoons, cigars and cigarettes, Hawaiian pudding, flower leis, make a total of $72.50?

A. That's correct.

Q. And was a new bill, or a changed bill, with the deletion of the articles listed upon United States Exhibit "G", made out?

A. Yes, a new bill was made out.

Q. And what exhibit is that, Mr. Deville?

A. Well, the items that were actually delivered are represented on United States Exhibit "H".

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Mr. ULRICH: One voucher exhibits items that were actually delivered and listed on one sheet, and the others had been incorrectly listed on another one?

A. Beg pardon; items of one of them that were actually delivered at that time are listed on United States Exhibit "H", and the other ones are on the other one.

Mr. MOORE: That is, the luau affair is on Exhibit "J"?

A. That's correct.

(Testimony of Charles I. Deville.)

Q. The amount of the changed bill, Exhibit "H", is $454.10, and of Exhibit "J", of which you spoke, is $72.50; is that correct, Mr. Deville?

A. That's correct.

Q. Which makes up the total of $526.60 as listed to be the total on United States Exhibit "G"?

A. Yes.

Mr. MOORE: You may cross-examine.

(Recess—9:54 to 10:02 a. m.)

Cross-Examination.

By BARRY S. ULRICH, Esq.

Q. Mr. Deville, you recall, do you not, coming to see me about Mr. Lee Chong showing you his book and talking this matter over with you?

A. I do.

Q. And explaining to me that you were investigating this matter and that you wanted to talk to Mr. Lee Chong and that he had referred you to me, or something of that kind?

A. Well yes, there was something of that kind; he wasn't in town at the time.

Q. I believe he had gone out of town, and someone had [495] suggested that he would consult me when he came back and he wanted me to take up the matter with him whether or not he would make a disclosure to you of what he had?

A. That's correct.

(Testimony of Charles I. Deville.)

Q. And you recall, do you not, that at a later time I advised you that I would instruct Mr. Lee Chong to show you everything that he had?

A. That's correct.

Q. And after that you had these conversations with him, did you?

A. I did.

Q. As I understand your testimony, it's simply this, is it not, Mr. Deville: That Mr. Lee Chong —or, rather, perhaps his bookkeeper more than he —advised you of certain changes that had been made in the bills as originally presented?

A. In these bills, yes sir.

Q. And he told you—he or the bookkeeper told you that with reference to the May 12th bill, represented in the first instance by United States Exhibit "B", that that bill had been changed to what we have here as United States Exhibit "D", and that the items ruled out on Exhibit "B" had been changed to other items as appearing on Exhibit "D", and that Exhibit "B" had represented the merchandise on the original delivery, excepting that the item of "oysters" had been "flowers"; is that substantially correct?

Mr. MOORE: No; I think you're wrong in the testimony there, Mr. Ulrich. That item of oysters and strawberries covered the flowers. [496]

Mr. ULRICH: The items of oysters and strawberries covered the flowers?